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Legislative History – Montana Session Law

Chapter: 483 Session L: 2007
Bill Number: SB 547

Checklist of Bill History

History and Final Status Sheet	☐
Introduced Bill	☐
Fiscal Note	☐
Third Reading Bill	☐
Final Version of Bill	☐

House	**Senate**
Committee: Judiciary	Committee: Judiciary
Hearing Date(s): 3/24/2007	Hearing Date(s): 2/22/2007
Committee Report: 4/2/2007	Committee Report: 2/23/2007

Conference Committee

Hearing Date(s): 4/18/2007 – Senate Hearing to dissolve committee & appoint Free committee
4/20/2007 – Free Committee
4/24/2007 – Free Committee
Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 8/1/2024

Notes: Missing exhibits from Hearing 3/28/2007.
Missing minutes for Hearings on: 4/18/2007, 4/20/2007, 4/24/2007. Hearing audio recordings are available on the Legislature's website.

2/23	TABLED IN COMMITTEE		
2/28	MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL DIED IN STANDING COMMITTEE		

SB 547 INTRODUCED BY PERRY *LC2548 DRAFTER: LANE*

REVISE LAWS ON SENTENCING, REGISTRATION, AND TREATMENT OF SEXUAL OFFENDERS

BY REQUEST OF SENATE JUDICIARY STANDING COMMITTEE

2/20	FISCAL NOTE REQUESTED		
2/20	INTRODUCED		
2/20	REFERRED TO JUDICIARY		
2/22	HEARING		
2/23	COMMITTEE EXECUTIVE ACTION—BILL PASSED	12	0
2/23	COMMITTEE REPORT—BILL PASSED		
2/26	FISCAL NOTE RECEIVED		
2/26	FISCAL NOTE SIGNED		
2/26	2ND READING PASSED ON VOICE VOTE	49	1
2/26	FISCAL NOTE PRINTED		
2/27	REVISED FISCAL NOTE RECEIVED		
2/27	3RD READING PASSED	49	1
	TRANSMITTED TO HOUSE		
3/15	REFERRED TO JUDICIARY		
3/19	REVISED FISCAL NOTE PRINTED		
3/28	HEARING		
4/03	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	16	1
4/03	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	REVISED FISCAL NOTE REQUESTED		
4/04	2ND READING CONCURRED AS AMENDED	95	4
4/04	3RD READING CONCURRED	93	4
	RETURNED TO SENATE WITH AMENDMENTS		
4/12	REVISED FISCAL NOTE RECEIVED		
4/13	2ND READING HOUSE AMENDMENTS NOT CONCURRED ON VOICE VOTE	50	0
4/13	CONFERENCE COMMITTEE APPOINTED		
4/14	CONFERENCE COMMITTEE APPOINTED		
4/16	REVISED FISCAL NOTE PRINTED		
4/18	HEARING		
4/19	CONFERENCE COMMITTEE DISSOLVED		
4/19	FREE CONFERENCE COMMITTEE APPOINTED		
4/20	HEARING		
4/20	CONFERENCE COMMITTEE DISSOLVED		
4/20	FREE CONFERENCE COMMITTEE APPOINTED		
4/24	HEARING		
4/25	FREE CONFERENCE COMMITTEE REPORT RECEIVED		
4/25	FREE CONFERENCE COMMITTEE REPORT RECEIVED		
4/26	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	95	5
4/26	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	39	11
4/26	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	37	13
4/27	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	95	4
5/01	SENT TO ENROLLING		
5/02	RETURNED FROM ENROLLING		
5/09	SIGNED BY PRESIDENT		
5/10	SIGNED BY SPEAKER		
5/10	TRANSMITTED TO GOVERNOR		
5/11	SIGNED BY GOVERNOR		
5/11	CHAPTER NUMBER ASSIGNED CHAPTER NUMBER 483 EFFECTIVE DATE: 5/11/2007 - ALL SECTIONS		

SB 548 INTRODUCED BY PERRY *LC2072 DRAFTER: HEFFELFINGER*

REPORT OF CANVASS IS ELECTION RECORD FOR CERTIFIED ROSTERS OF LEGISLATORS

2/21	INTRODUCED		
2/21	REFERRED TO JUDICIARY		
2/23	HEARING		
2/23	TABLED IN COMMITTEE		
2/28	MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL DIED IN STANDING COMMITTEE		

SENATE BILL NO. 547

INTRODUCED BY _____
(Primary Sponsor)

BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT STRENGTHENING THE REGISTRATION REQUIREMENTS AND OTHER PROVISIONS APPLICABLE TO SEXUAL OFFENDERS; AMENDING PROVISIONS GOVERNING YOUTH COURT, CRIMINAL PROSECUTION AND PENALTIES, DEFINITIONS, PROBATION AND PAROLE, REGISTRATION OF TRANSIENTS, AND DISSEMINATION OF INFORMATION ABOUT SEXUAL OFFENDERS; REQUIRING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM; AMENDING SECTIONS 41-5-206, 41-5-216, 41-5-1513, 45-5-503, 45-5-625, 46-18-111, 46-18-201, 46-18-202, 46-18-203, 46-18-205, 46-18-231, 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, 46-23-509, 46-23-1011, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and

the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) sexual assault as provided in 45-5-502(3);

~~(iv)~~(v) assault with a weapon as defined in 45-5-213;

~~(v)~~(vi) robbery as defined in 45-5-401;

~~(vi)~~(vii) burglary or aggravated burglary as defined in 45-6-204;

~~(vii)~~(viii) aggravated kidnapping as defined in 45-5-303;

~~(viii)~~(ix) possession of explosives as defined in 45-8-335;

~~(ix)~~(x) criminal distribution of dangerous drugs as defined in 45-9-101;

~~(x)~~(xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);

~~(xi)~~(xii) criminal possession with intent to distribute as defined in 45-9-103(1);

~~(xii)~~(xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

~~(xiii)~~(xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership~~,~~ as defined in 45-8-403;

~~(xiv)~~(xv) escape as defined in 45-7-306;

~~(xv)~~(xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through ~~(1)(b)(xiv)~~ (1)(b)(xv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

(a) a youth court proceeding and disposition will serve the interests of community protection;

(b) the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

Section 2. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of youth court, law enforcement, and department records. (1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, ~~or~~ reports referred to in 45-5-624(7), or the information referred to in 46-23-508, in any instance in which the youth was required to register, pursuant to Title 46, chapter 23, part 5, as a sexual offender.

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may ~~only~~ be

inspected only pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was ~~only~~ involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(9) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section."

Section 3. Section 41-5-1513, MCA, is amended to read:

"41-5-1513. Disposition -- delinquent youth -- restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released

until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register and remain registered as a sexual or violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection to ensure registration compliance. The court:

(i) shall, prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-18-111;

(ii) if the court requires the youth to register as a sexual offender, shall designate the youth's risk level pursuant to 46-23-509.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a ~~sex~~ sexual offense, the youth court may require completion of ~~sex~~ sexual offender treatment before a youth is discharged.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel."

Section 4. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219, ~~and~~ 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the

time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed $50,000, or both.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (4), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (4)(a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse without consent for which the person is being sentenced under subsection (4)(a); or

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person.

~~(4)~~(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

~~(5)~~(6) As used in ~~subsection~~ subsections (3) and (4), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

Section 5. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication as defined in 45-8-213, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated.

(2) (a) ~~A~~ Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than $10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is

processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a ~~sex~~ sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (4), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (4)(a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing the offense for which the person is being sentenced under subsection (4)(a); or

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person."

Section 6. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required. (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505,

45-5-507, 45-5-625, ~~or~~ 45-5-627, or 46-23-507 if the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) The court shall order a presentence report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a $50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(4)."

Section 7. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4) and 45-5-625(4); or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of ~~sex~~ sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) of this section may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(p) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment

of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 8. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

(a) prohibition of the offender's holding public office;

(b) prohibition of the offender's owning or carrying a dangerous weapon;

(c) restrictions on the offender's freedom of association;

(d) restrictions on the offender's freedom of movement;

(e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;

(f) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

~~(3) An offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison shall enroll in and complete the educational phase of the prison's sexual offender program.~~"

Section 9. Section 46-18-203, MCA, is amended to read:

"**46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, ~~or~~ any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4) or 45-5-625(4), the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

(i) the terms and conditions of the suspended or deferred sentence; or

(ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4) or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 10. Section 46-18-205, MCA, is amended to read:

"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension. (1) If the victim was less than 16 years ~~old~~ of age, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-505, deviate sexual conduct; or

(d) 45-5-507, incest.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

(a) 45-5-103(4), mitigated deliberate homicide;

(b) 45-5-202, aggravated assault;

(c) 45-5-302(2), kidnapping;

(d) 45-5-303(2), aggravated kidnapping;

(e) 45-5-401(2), robbery;

(f) 45-5-502(3), sexual assault;

(g) 45-5-503(2) and (3), sexual intercourse without consent;

(h) 45-5-603, aggravated promotion of prostitution;

(i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;

(j) 45-9-102(4), criminal possession of dangerous drugs; and

(k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

(4) The provisions of this section do not apply to sentences imposed pursuant to 45-5-503(4) or 45-5-625(4)."

Section 11. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an

offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-213, assault with a weapon;

(iv) 45-5-302(2), kidnapping;

(v) 45-5-303(2), aggravated kidnapping;

(vi) 45-5-401(2), robbery;

(vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;

(viii) 45-5-503(2) ~~and (3)~~ through (4), sexual intercourse without consent, and 45-5-625(4), sexual abuse of children by a sexual predator of children;

(ix) 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal possession with intent to distribute a dangerous drug;

(x) 45-9-102(4), criminal possession of an opiate;

(xi) 45-9-103(2), criminal possession of an opiate with an intent to distribute; and

(xii) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed $50,000."

Section 12. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

~~(3)~~(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(4)~~(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(5)~~(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

~~(6)~~(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502(3), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim), 45-5-603(1)(b), or 45-5-625; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection ~~(6)(a)~~ (9)(a) or for which the offender was required to

register as a ~~sex~~ sexual offender after conviction.

~~(7)~~(10) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

~~(8)~~(11) "Sexually violent predator" means a person who:

(a) has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses~~.~~; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

~~(9)~~(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (13)(a)."

Section 13. Section 46-23-504, MCA, is amended to read:

"46-23-504. Persons required to register -- procedure. (1) ~~A~~ Except as provided in 41-5-1513, a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within ~~10~~ 3 business days of entering a county of this state for the purpose of residing or setting up a temporary ~~domicile~~ residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection (1)(a), ~~or~~ (1)(c), or (1)(d) must be with the ~~chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever law enforcement official the offender registers with~~ appropriate registration agency. If an offender registers with a

police department, the department shall notify the ~~other official~~ sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate ~~law enforcement~~ registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through (3)(g) and any other information required by the department of justice. The ~~chief of police or sheriff~~ registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days, the ~~chief of police or sheriff~~ registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The information collected from the offender at the time of registration must include the:

(a) name of the offender and any aliases used by the offender;

(b) offender's social security number;

(c) residence information required by subsection (4);

(d) name and address of any business or other place where the offender is or will be an employee;

(e) name and address of any school where the offender will be a student;

(f) offender's driver's license number; and

(g) description and license number of any motor vehicle owned or operated by the offender.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the registration agency may require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through (3)(g). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

~~(4)~~(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509; ~~and~~

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

~~(ii)~~(iii) each year to a violent offender or an offender designated as a level 1 ~~or level 2~~ offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

~~(b)~~(c) The form must require the offender's ~~current address and~~ notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the ~~department~~ registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

~~(5)~~(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

~~(6)~~(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 14. Section 46-23-505, MCA, is amended to read:

"46-23-505. Notice of change of ~~address~~ name or residence or student, employment, or transient status -- duty to inform -- forwarding of information. (1) If an offender required to register under this part has a change of ~~address~~ name or residence or a change in student, employment, or transient status, the offender shall within ~~10~~ 3 business days of the change ~~give written~~ appear in person and give notification of the ~~new address~~ change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the ~~department and to the chief of police of the municipality or sheriff of the county~~ registration agency for the county or municipality from which the offender is moving. ~~The agency or~~

~~department shall, within 3 days after receipt of the new address, forward it to the department of justice, which shall forward a copy of the new address and photograph to the sheriff having jurisdiction over the new address and to the chief of police of the municipality of the new address if the new address is in a municipality.~~

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality."

Section 15. Section 46-23-506, MCA, is amended to read:

"46-23-506. Duration of registration. (1) A sexual offender required to register under this part shall register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time during which the offender is in prison.

(2) A violent offender required to register under this part shall register:

(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing, but the offender is not relieved of the duty to register until a petition is granted under subsection (3)(a); or

(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as provided in subsection (3)(b).

(3) (a) An offender required to register for 10 years under subsection (2)(a) may, after the 10 years have passed, petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the

county where.the petition is filed. The petition must be granted if the defendant has not been convicted under subsection (2)(b).

(b) Except as provided in subsection (5), at any time after 10 years of registration for a level 1 sexual offender and at any time after 25 years of registration for a level 2 sexual offender, an offender ~~required to register for life~~ may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(i) the offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under subsection (3)(b) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

(5) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 16. Section 46-23-508, MCA, is amended to read:

"46-23-508. Dissemination of information. (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) ~~a law enforcement~~ the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall, and the registration agency may, disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

~~(i)~~(ii) if an offender was given a level 1 designation under 46-23-509, ~~the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;~~ the department of justice shall, and the registration agency may, disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; and

(D) the offenses for which the offender is required to register under this part;

~~(ii)~~(iii) if an offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall, and the registration agency ~~with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of~~ may, disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any vehicle owned or operated by the offender;

~~(D)~~(F) the offenses for which the offender is required to register under this part; and

~~(E)~~(G) any conditions imposed by the court upon the offender for the safety of the public; and

~~(iii)~~(iv) if an offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection ~~(1)(b)(ii)~~ (1)(b)(iii). The ~~agency shall~~ notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and ~~shall~~ must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a ~~law enforcement~~ registration agency may, in its sole discretion, request an in camera review by a district court of the determination by the ~~law enforcement~~ registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a ~~law enforcement~~ registration agency without the permission of the victim.

(3) ~~A state or local law enforcement agency may use the internet to disseminate the information allowed by this section to the public.~~ Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 17. Section 46-23-509, MCA, is amended to read:

"46-23-509. Sexual offender evaluations and designations -- rulemaking authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (6) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(6) If an offense is covered by 46-23-502~~(6)(b)~~(9)(b), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government.

(7) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section."

Section 18. Section 46-23-1011, MCA, is amended to read:

"46-23-1011. Supervision on probation. (1) The department shall supervise probationers during their probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4) or

45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court ~~must~~ shall hold a hearing pursuant to the provisions of 46-18-203.

(e) ~~The~~ Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-503(4) or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(5) (a) Upon recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection (5)(a) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from

supervision.

(c) If the department certifies to the sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 19. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for the siting, establishment, and expansion of prerelease centers, rules for the establishment and maintenance of residential methamphetamine treatment programs, rules for the establishment and maintenance of a residential sexual offender treatment program, and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have

violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

(iii) a residential sexual offender treatment program.

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of intervention and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of intervention and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention and who are committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department and a private, nonprofit Montana corporation may not enter into a contract under subsection (1)(c) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c). Prior to entering into a contract for a period of 10 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth correctional facilities.

(4) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing."

NEW SECTION. **Section 20. Sexual offender treatment.** (1) Upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.

(2) The court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:

(a) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program; and

(b) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509 or is a sexually violent predator as defined in 46-23-502, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program.

(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

(4) (a) Except for an offender sentenced pursuant to 45-5-503(4) or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.

(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.

(5) If a person's sentence is suspended pursuant to subsection (4)(b), during the suspended portion of the sentence the person:

(a) shall abide by the standard conditions of probation established by the department of corrections;

(b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is financially able to pay those costs;

(c) may have no contact with the victim or the victim's immediate family unless approved by the victim or the victim's parent or guardian, the person's therapists, and the person's probation officer;

(d) shall comply with all requirements and conditions of sexual offender treatment as directed by the person's sex offender therapist;

(e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(f) may not consume alcoholic beverages;

(g) shall enter and remain in an aftercare program as directed by the person's probation officer;

(h) shall submit to random or routine drug and alcohol testing;

(i) may not possess pornographic material or access pornography through the internet; and

(j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or continuous satellite monitoring.

(6) The sentencing of a sexual offender is subject to 46-18-219.

(7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a sexual offender to impose any part of a sentence that was previously suspended.

NEW SECTION. **Section 21. Codification instruction.** [Section 20] is intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to [section 20].

NEW SECTION. **Section 22. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 23. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 24. Retroactive applicability.** [Sections 2, 3, and 12 through 17] apply retroactively, within the meaning of 1-2-109, to:

(1) sexual offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after July 1, 1989; and

(2) violent offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after October 1, 1995.

- END -

GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0547	Title:	Revise laws on sentencing, registration, and treatment of sexual offenders
Primary Sponsor:	Perry, Gary L	Status:	As Introduced

☐ Significant Local Gov Impact ☑ Needs to be included in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☑ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:				
General Fund	$828,000	$828,000	$828,000	$828,000
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance	($828,000)	($828,000)	($828,000)	($828,000)

Description of Fiscal Impact:
The fiscal impact in FY 2008-2011 would result from contracting with additional Sex Offender Treatment Specialists to handle the increase of offenders required to successfully complete sex offender treatment. Long term fiscal impact would result from an increase in the minimum sentence to 25 years for sexual abuse of children or sexual intercourse without consent. In addition, per Title 47, the Office of the State Public Defender provides attorney services to clients that qualify for them. This bill increases penalties, resulting in an increased workload for each case. Additionally, this bill would increase the need to provide attorneys services because the statute, if enacted, would increase the probability of defendants requesting trials due to the increased penalties provided in the bill.

FISCAL ANALYSIS

Assumptions:
Department of Corrections (DoC)
1. This bill imposes a sentence of imprisonment of 100 years for the crimes of sexual intercourse without consent and sexual abuse of children where the victim is 12 or under and where the offender is determined to be a sexual predator of children. At minimum, the first 25 years of the sentence may not be deferred or

suspended, the balance of the 100 years that is not deferred or suspended will be spent on lifetime probation with GPS monitoring. Lifetime probation and GPS monitoring will not occur until at least FY 2033.

2. SB 207, passed in the 2005 legislative session, already requires GPS monitoring for level 3 sex offenders. Currently GPS monitoring costs $8.82 per offender per day. Using the current cost per day, the cost of GPS monitoring for five offenders in FY 2033 would be approximately $1,349.
3. The current average prison sentence for offenders convicted of these sex crimes is six years. The DoC estimates five offenders will enter prison each year for these crimes. An increase in cost for these five offenders will occur in FY 2014, six years after the bill's effective date of 7/1/07 based on the average length of stay for these sex crimes. The cost in FY 2014 is estimated to be $80,281 based on five offenders each year at $75.88 per day. Long-term impact of sentencing sex offenders to a minimum 25 year sentence is estimated to be $2,653,220 by FY 2033. DoC estimates this number by compounding the five offenders each year so the cost in the second year would be based on 10 offenders, 15 in the third year, 20 in the fourth, etc.
4. All levels of sex offenders must enroll in and successfully complete sex offender treatment Phase I [SOP] to be eligible for parole. Under this bill, level 3 sex offenders are eligible for parole only upon completion of sex offender treatment Phase II [SOP].
5. SOP Phase I takes 16 weeks to complete and SOP Phase II takes two years to complete. Montana State Prison (MSP) is the only facility in Montana that provides SOP Phase II and currently has a waiting list of approximately 250 offenders for SOP Phase I and SOP Phase II treatment. If this bill passes and treatment is not completed before the offender's parole date, the offender's prison stay could be extended. Currently 68 offenders at MSP have paroled or discharged their sentences without completing SOP Phase I, SOP Phase II or both. If this bill becomes law an offender would have a liberty interest in being able to complete treatment by the time he/she is parole eligible.
6. DoC estimates an additional 7,584 hours of treatment would be needed to accommodate the mandates of this bill and allow offenders to complete treatment prior to their parole dates. The number of treatment hours needed is calculated by multiplying 68 offenders who will need to complete SOP Phase I by two hours per week for 16 weeks for a total of 2,176 hours. Also 13 offenders will need to complete SOP Phase II for four hours per week for 104 weeks for a total of 5,408 hours. SOP Phase II requires treatment specialists to be MSOTA clinical members. Additional Sex Offender Treatment contracts would be needed in order to provide SOP Phase I and Phase II for an extra 68 sex offenders in prison each year who need treatment. These contracts would cost approximately $288,000 per year.
7. This bill also allows DoC to place any sex offender in a sex offender treatment facility for up to four years. The availability of a sex offender treatment facility is dependent on whether funding is approved by the legislature for the department to contract for the construction of up to a 200 bed facility. An increase in cost could result from level 1 and 2 sex offenders who, under current law, would be sentenced to probation, could now be sentenced to the sex offender treatment facility. It is difficult to determine how many offenders would be affected. It is also difficult to determine fiscal impact because a judge can still sentence a level 1 or 2 sex offender to probation, to a treatment facility, or to prison.
8. Under this bill an additional 11 offenders between the ages of 16 and 18 could be sentenced as an adult instead of a juvenile for the crime of sexual assault. Because it is the courts discretion, there is no way to determine how many of those offenders currently sentenced as a juvenile would be sentenced as an adult.

Office of the Public Defender (OPD)

9. OPD estimated approximately 600 cases, annually, might be affected by this bill. OPD assumed that existing FTE could absorb up to 150 cases maximum. The balance of approximately 450 cases would be handled by contract attorneys at an average of $60 per hour. The estimated increased time without trials would be approximately 10 hours, on an average, per case. For those cases taken to trial the increased time per case would range up to 30 hours per case, and perhaps more. Averaging the two scenarios, OPD assumed an average of 25 hours of additional work would be required per case.
10. Estimate 450 cases (assigned to contract attorneys) x 20 hrs x $60/hr = $ 540,000

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
Department of Corrections - (DoC)				
Office of the Public Defender (OPD)				
Expenditures:				
Operating Expenses - DoC	$288,000	$288,000	$288,000	$288,000
Operating Expenses - OPD	$540,000	$540,000	$540,000	$540,000
TOTAL Expenditures	$828,000	$828,000	$828,000	$828,000
Funding of Expenditures:				
General Fund (01)	$828,000	$828,000	$828,000	$828,000
Revenues:				
General Fund (01)	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($828,000)	($828,000)	($828,000)	($828,000)

Long-Range Impacts:

1. The long-term impact of sentencing sex offenders to a minimum 25 year sentence is estimated to be $2,653,220 by FY 2033.

GLP — *Sponsor's Initials*

2/26/07 — *Date*

Budget Director's Initials

2/26/07 — *Date*

GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0547	Title:	Revise laws on sentencing, registration, and treatment of sexual offenders
Primary Sponsor:	Perry, Gary L	Status:	As Introduced-Revised

☐ Significant Local Gov Impact ☑ Needs to be included in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☑ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:				
General Fund	$333,600	$333,600	$333,600	$333,600
Revenue:				
General Fund	$0	$0	$0	$0
Net **Impact-General Fund Balance**	($333,600)	($333,600)	($333,600)	($333,600)

Description of Fiscal Impact:

The fiscal impact in FY 2008-2011 would result from contracting with additional Sex Offender Treatment Specialists to handle the increase of offenders required to successfully complete sex offender treatment. Long term fiscal impact would result from an increase in the minimum sentence to 25 years for sexual abuse of children or sexual intercourse without consent. In addition, per Title 47, the Office of the State Public Defender provides attorney services to clients that qualify for them. This bill increases penalties, resulting in an increased workload for each case. Additionally, this bill would increase the need to provide attorneys services because the statute, if enacted, would increase the probability of defendants requesting trials due to the increased penalties provided in the bill.

FISCAL ANALYSIS

Assumptions:

Department of Corrections (DoC)

1. This bill imposes a sentence of imprisonment of 100 years for the crimes of sexual intercourse without consent and sexual abuse of children where the victim is 12 or under and where the offender is determined to be a sexual predator of children. At minimum, the first 25 years of the sentence may not be deferred or

suspended, the balance of the 100 years that is not deferred or suspended will be spent on lifetime probation with GPS monitoring. Lifetime probation and GPS monitoring will not occur until at least FY 2033.

2. SB 207, passed in the 2005 legislative session, already requires GPS monitoring for level 3 sex offenders. Currently GPS monitoring costs $8.82 per offender per day. Using the current cost per day, the cost of GPS monitoring for five offenders in FY 2033 would be approximately $1,349.
3. The current average prison sentence for offenders convicted of these sex crimes is six years. The DoC estimates five offenders will enter prison each year for these crimes. An increase in cost for these five offenders will occur in FY 2014, six years after the bill's effective date of 7/1/07 based on the average length of stay for these sex crimes. The cost in FY 2014 is estimated to be $80,281 based on five offenders each year at $75.88 per day. Long-term impact of sentencing sex offenders to a minimum 25 year sentence is estimated to be $2,653,220 by FY 2033. DoC estimates this number by compounding the five offenders each year so the cost in the second year would be based on 10 offenders, 15 in the third year, 20 in the fourth, etc.
4. All levels of sex offenders must enroll in and successfully complete sex offender treatment Phase I [SOP] to be eligible for parole. Under this bill, level 3 sex offenders are eligible for parole only upon completion of sex offender treatment Phase II [SOP].
5. SOP Phase I takes 16 weeks to complete and SOP Phase II takes two years to complete. Montana State Prison (MSP) is the only facility in Montana that provides SOP Phase II and currently has a waiting list of approximately 250 offenders for SOP Phase I and SOP Phase II treatment. If this bill passes and treatment is not completed before the offender's parole date, the offender's prison stay could be extended. Currently 68 offenders at MSP have paroled or discharged their sentences without completing SOP Phase I, SOP Phase II or both. If this bill becomes law an offender would have a liberty interest in being able to complete treatment by the time he/she is parole eligible.
6. DoC estimates an additional 7,584 hours of treatment would be needed to accommodate the mandates of this bill and allow offenders to complete treatment prior to their parole dates. The number of treatment hours needed is calculated by multiplying 68 offenders who will need to complete SOP Phase I by two hours per week for 16 weeks for a total of 2,176 hours. Also 13 offenders will need to complete SOP Phase II for four hours per week for 104 weeks for a total of 5,408 hours. SOP Phase II requires treatment specialists to be MSOTA clinical members. Additional Sex Offender Treatment contracts would be needed in order to provide SOP Phase I and Phase II for an extra 68 sex offenders in prison each year who need treatment. These contracts would cost approximately $288,000 per year.
7. This bill also allows DoC to place any sex offender in a sex offender treatment facility for up to four years. The availability of a sex offender treatment facility is dependent on whether funding is approved by the legislature for the department to contract for the construction of up to a 200 bed facility. An increase in cost could result from level 1 and 2 sex offenders who, under current law, would be sentenced to probation, could now be sentenced to the sex offender treatment facility. It is difficult to determine how many offenders would be affected. It is also difficult to determine fiscal impact because a judge can still sentence a level 1 or 2 sex offender to probation, to a treatment facility, or to prison.
8. Under this bill an additional 11 offenders between the ages of 16 and 18 could be sentenced as an adult instead of a juvenile for the crime of sexual assault. Because it is the courts discretion, there is no way to determine how many of those offenders currently sentenced as a juvenile would be sentenced as an adult.

Office of the Public Defender (OPD)

9. OPD estimates approximately 50 cases annually might be affected by this bill. OPD assumed that existing FTE could absorb up to 25 percent of this caseload or 12 cases. The balance of approximately 38 cases would be handled by contract attorneys at an average of $60 per hour. OPD estimates that 50 percent of contact cases would go to trial due to penalty if convicted. Therefore, the approximately 19 cases that would not go to trial would require about 10 hours of attorney time and those that do go to trial (about 19 cases) would require about 30 hours of trial time.
10. Cases that do not do to trial: 19 cases (assigned to contract attorneys) x 10 hrs x $60/hr = $ 11,400

11. Cases that do go to trial: 19 cases (assigned to contract attorneys) x 30 hrs x $60/hr = $34,200
12. Total estimated cost: $45,600 ($11,400 + $34,200).

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
Department of Corrections - (DoC)				
Office of the Public Defender (OPD)				
Expenditures:				
Operating Expenses - DoC	$288,000	$288,000	$288,000	$288,000
Operating Expenses - OPD	$45,600	$45,600	$45,600	$45,600
TOTAL Expenditures	$333,600	$333,600	$333,600	$333,600
Funding of Expenditures:				
General Fund (01)	$333,600	$333,600	$333,600	$333,600
Revenues:				
General Fund (01)	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($333,600)	($333,600)	($333,600)	($333,600)

Long-Range Impacts:

1. The long-term impact of sentencing sex offenders to a minimum 25 year sentence is estimated to be $2,653,220 by FY 2033.

GP	2/27/07	[signature]	2/27/07
Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

LC2548.01
APPROVED BY COMM ON
JUDICIARY

S BILL NO. 547

INTRODUCED BY _____
(Primary Sponsor)

BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT STRENGTHENING THE REGISTRATION REQUIREMENTS AND OTHER PROVISIONS APPLICABLE TO SEXUAL OFFENDERS; AMENDING PROVISIONS GOVERNING YOUTH COURT, CRIMINAL PROSECUTION AND PENALTIES, DEFINITIONS, PROBATION AND PAROLE, REGISTRATION OF TRANSIENTS, AND DISSEMINATION OF INFORMATION ABOUT SEXUAL OFFENDERS; REQUIRING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM; AMENDING SECTIONS 41-5-206, 41-5-216, 41-5-1513, 45-5-503, 45-5-625, 46-18-111, 46-18-201, 46-18-202, 46-18-203, 46-18-205, 46-18-231, 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, 46-23-509, 46-23-1011, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO INTRODUCED COPY (WHITE) FOR COMPLETE TEXT.

SENATE BILL NO. 547

INTRODUCED BY _____
(Primary Sponsor)

BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT STRENGTHENING THE REGISTRATION REQUIREMENTS AND OTHER PROVISIONS APPLICABLE TO SEXUAL OFFENDERS; AMENDING PROVISIONS GOVERNING YOUTH COURT, CRIMINAL PROSECUTION AND PENALTIES, DEFINITIONS, PROBATION AND PAROLE, REGISTRATION OF TRANSIENTS, AND DISSEMINATION OF INFORMATION ABOUT SEXUAL OFFENDERS; REQUIRING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM; AMENDING SECTIONS 41-5-206, 41-5-216, 41-5-1513, 45-5-503, 45-5-625, 46-18-111, 46-18-201, 46-18-202, 46-18-203, 46-18-205, 46-18-231, 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, 46-23-509, 46-23-1011, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0547	Title:	Revise laws on sentencing, registration, and treatment of sexual offenders
Primary Sponsor:	Perry, Gary L	Status:	As Amended in House Committee

☐ Significant Local Gov Impact ☑ Needs to be included in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☑ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Expenditures:				
General Fund	$537,758	$1,405,597	$2,312,667	$3,182,631
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance	($537,758)	($1,405,597)	($2,312,667)	($3,182,631)

Description of Fiscal Impact:

Fiscal impact in FY 2008-2011 would result from the mandatory minimums contained in this bill for a sex offender, who offends against a child age 12 or under. This bill would significantly broaden the number of offenders sentenced to the mandatory minimum sentence including offenders who, under current law, would be sentenced to probation. Long term fiscal impact would result from an increase in prison sentence to a minimum of 25 years and a maximum of 100 years for the crimes included in this bill. The first 25 years of the sentence may not be suspended or deferred and the offender may not be eligible for parole. In addition, per Title 47, the Office of the State Public Defender provides attorney services to clients that qualify for them. This bill increases penalties, resulting in an increased workload for each case. Additionally, this bill would increase the need to provide attorneys services because the statute, if enacted, would increase the probability of defendants requesting trials due to the increased penalties provided in the bill.

FISCAL ANALYSIS

Assumptions:

Department of Corrections (DoC)

1. This bill imposes a prison sentence of 100 years for the crimes of sexual intercourse without consent, sexual abuse of children, incest, sexual assault, prostitution, promoting prostitution and aggravated

promotion of prostitution if the victim is 12 or under. At minimum the first 25 years of the sentence may not be deferred or suspended and the offender is not eligible for parole. The balance of 100 years that is not deferred or suspended will be spent on lifetime probation with GPS monitoring. Lifetime probation and GPS monitoring will not occur until at least FY 2033 when the first offenders sentenced under this bill complete the mandatory prison sentence.

2. SB 207, passed in the 2005 legislative session, already requires GPS monitoring for level 3 sex offenders. Currently GPS monitoring costs $8.82 per offender per day. Using the current cost per day, the cost of GPS monitoring for 32 offenders in FY 2033 would be approximately $1,349.
3. The current average prison sentence for offenders convicted of these sex crimes is six years. DoC estimates 32 offenders, who under current law would be sentenced to probation, will enter prison each year in the first six years for the above crimes. An increase in cost for these 32 offenders will occur in FY 2008. Using the Montana State Prison current average cost per day of $75.88 the cost for 32 offenders in FY 2008 equals $492,158 due to a staggered and compounding entrance into prison. An additional 32 offenders in FY 2009 would cost DoC $1,359,997 compounding on an additional 32 offenders in FY 2010 to $2,267,067 and in FY 2011 to $3,137,031.
4. An additional increase in cost will occur six years after the bill's effective date of 7/1/07 based on the average length of stay for these sex crimes. DoC estimates an additional 38 offenders will be serving longer prison sentences for the above crimes under the provisions of this bill. The increase in cost for these offenders will occur in FY 2014. DoC estimates the cost by compounding the 32 offenders each year for the first six years and adding the 38 additional offenders in FY 2014 so the cost in the second year would be based on 64 offenders, 128 in the fourth year, 262 in the seventh year (FY 2017), etc. Long term impact for 262 offenders in FY 2014 would be $6,347,893 compounding and increasing to a total cost of $12,175,553 for 472 offenders by FY 2017.
5. The amended version of this bill deletes the provision (46-18-202) that requires all sex offenders to enroll in and successfully complete sex offender treatment Phase I [SOP] or sex offender treatment Phase II [SOP] while in prison. The sex offenders sentenced under the provisions of this bill and sex offenders who are court ordered must complete SOP Phase I and SOP Phase II.
6. The age range between offender and victim has been increased from three to four years for the crimes of sexual intercourse without consent and sexual assault. This modification may reduce the number of offenders incarcerated under this bill. Because DoC can not extract data specific to the age difference between the offender and victim at the time of the crime it is difficult to determine the reduction in offenders.
7. This bill also allows DoC to contract with a non-profit or for-profit entity to run a residential offender treatment program. The availability of a sex offender treatment facility is dependent on whether funding is approved by the legislature for the department to contract for the construction of up to a 130 bed facility. The amended version of this bill no longer allows an offender to be sentenced by a judge to the sex offender treatment facility. However, an offender sentenced to DoC may be placed, by DoC, in the sex offender treatment facility.
8. Under this bill an additional 11 offenders between the ages of 16 and 18 could be prosecuted as an adult instead of a juvenile for the crime of sexual assault. Because it is the courts' and prosecutors' discretion there is no way to determine how many of those juvenile offenders would be transferred to adult court and subjected to the increased minimum sentence of 25 to 100 years provided for in this bill.

Office of the Public Defender (OPD)

9. OPD estimates approximately 50 cases annually might be affected by this bill. OPD assumed that existing FTE could absorb up to 25 percent of this caseload or 12 cases. The balance of approximately 38 cases would be handled by contract attorneys at an average of $60 per hour. OPD estimates that 50 percent of contact cases would go to trial due to penalty if convicted. Therefore, the approximately 19 cases that would not go to trial would require about 10 hours of attorney time and those that do go to trial (about 19 cases) would require about 30 hours of trial time.

10. Cases that do not do to trial: 19 cases (assigned to contract attorneys) x 10 hrs x $60/hr = $ 11,400
11. Cases that do go to trial: 19 cases (assigned to contract attorneys) x 30 hrs x $60/hr = $34,200
12. Total estimated cost: $45,600 ($11,400 + $34,200).

	FY 2008 Difference	FY 2009 Difference	FY 2010 Difference	FY 2011 Difference
Fiscal Impact:				
Department of Corrections - (DoC)				
Office of the Public Defender (OPD)				
Expenditures:				
Operating Expenses - DoC	$492,158	$1,359,997	$2,267,067	$3,137,031
Operating Expenses - OPD	$45,600	$45,600	$45,600	$45,600
TOTAL Expenditures	$537,758	$1,405,597	$2,312,667	$3,182,631
Funding of Expenditures:				
General Fund (01)	$537,758	$1,405,597	$2,312,667	$3,182,631
Revenues:				
General Fund (01)	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($537,758)	($1,405,597)	($2,312,667)	($3,182,631)

Long-Range Impacts:
An additional increase in cost will occur six years after the bill's effective date of 7/1/07 based on the average length of stay for these sex crimes. DoC estimates an additional 38 offenders will be serving longer prison sentences for the above crimes under the provisions of this bill. The increase in cost for these offenders will occur in FY 2014. DoC estimates the cost by compounding the 32 offenders each year for the first six years and adding the 38 additional offenders in FY 2014 so the cost in the second year would be based on 64 offenders, 128 in the fourth year, 262 in the seventh year (FY 2017), etc. Long term impact for 262 offenders in FY 2014 would be $6,347,893 compounding and increasing to a total cost of $12,175,553 for 472 offenders by FY 2017.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*
			4/12/07

SENATE BILL NO. 547

INTRODUCED BY PERRY, CURTISS, PEASE, WILLIAMS, BALES, JUNEAU, STAPLETON, JENT, WANZENRIED, MOSS, LASLOVICH, COONEY, MCGEE, BROWN, BARKUS, LAIBLE, GILLAN, BLACK, BRUEGGEMAN, ELLIOTT, ESSMANN, GEBHARDT, HARRINGTON, JACKSON, LARSON, LEWIS, LIND, J. PETERSON, RYAN, SCHMIDT, SMITH, SQUIRES, STEINBEISSER, STORY, TASH, WEINBERG

BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT STRENGTHENING THE REGISTRATION REQUIREMENTS AND OTHER PROVISIONS APPLICABLE TO SEXUAL OFFENDERS; AMENDING PROVISIONS GOVERNING YOUTH COURT, CRIMINAL PROSECUTION AND PENALTIES, DEFINITIONS, PROBATION AND PAROLE, REGISTRATION OF TRANSIENTS, AND DISSEMINATION OF INFORMATION ABOUT SEXUAL OFFENDERS; ~~REQUIRING~~ ALLOWING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM; AMENDING SECTIONS 41-5-206, 41-5-216, 41-5-1513, 45-1-205, 45-5-502, 45-5-503, 45-5-507, 45-5-512, 45-5-625, 46-18-111, 46-18-201, 46-18-202, 46-18-203, 46-18-205, 46-18-231, 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, 46-23-509, 46-23-1011, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) sexual assault as provided in 45-5-502(3) OR (4);

~~(iv)~~(v) assault with a weapon as defined in 45-5-213;

~~(v)~~(vi) robbery as defined in 45-5-401;

~~(vi)~~(vii) burglary or aggravated burglary as defined in 45-6-204;

~~(vii)~~(viii) aggravated kidnapping as defined in 45-5-303;

~~(viii)~~(ix) possession of explosives as defined in 45-8-335;

~~(ix)~~(x) criminal distribution of dangerous drugs as defined in 45-9-101;

~~(x)~~(xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);

~~(xi)~~(xii) criminal possession with intent to distribute as defined in 45-9-103(1);

~~(xii)~~(xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

~~(xiii)~~(xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership~~,~~ as defined in 45-8-403;

~~(xiv)~~(xv) escape as defined in 45-7-306;

~~(xv)~~(xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through ~~(1)(b)(xiv)~~ (1)(b)(xv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless

the district court finds, by a preponderance of the evidence, that:

(a) a youth court proceeding and disposition will serve the interests of community protection;

(b) the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

Section 2. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of youth court, law enforcement, and department records. (1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under

subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, ~~or~~ reports referred to in 45-5-624(7), or the information referred to in 46-23-508, in any instance in which the youth was required to register, pursuant to Title 46, chapter 23, part 5, as a sexual offender.

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may ~~only~~ be inspected only pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was ~~only~~ involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(9) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section."

Section 3. Section 41-5-1513, MCA, is amended to read:

"41-5-1513. Disposition -- delinquent youth -- restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register and remain registered as a sexual or violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection to ensure registration compliance. The court:

(i) shall, prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-18-111;

(ii) if the court requires the youth to register as a sexual offender, shall designate the youth's risk level pursuant to 46-23-509.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a ~~sex~~ sexual offense, the youth court ~~may~~ SHALL require completion of ~~sex~~ sexual offender treatment ~~before a youth is discharged~~.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel."

SECTION 4. SECTION 45-1-205, MCA, IS AMENDED TO READ:

"45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) or (5) may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(c) A prosecution under 45-5-504, 45-5-505, 45-5-507(1), (2), (3), or ~~(5)~~ (6), 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer

becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

SECTION 5. SECTION 45-5-502, MCA, IS AMENDED TO READ:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) ~~A~~ Except as provided in subsections (3) and (4), a person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be

punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than $50,000.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall, upon a second or subsequent offense punishable pursuant to this subsection (4)(a), be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (4), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (4)(a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse without consent for which the person is being sentenced under subsection (4)(a) of this section;

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; or

(v) is known by the victim but does not meet the criteria in subsections (4)(c)(i) through (4)(c)(iv).

~~(4)~~(5) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

~~(5)~~(6) Consent is ineffective under this section if:

(a) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority

over the victim, unless the act is part of a lawful search; or

(b) the victim is less than 14 years old and the offender is 3 or more years older than the victim."

Section 6. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219, ~~and~~ 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall

be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed $50,000, or both.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (4), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (4)(a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse without consent for which the person is being sentenced under subsection (4)(a); ~~or~~

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; OR

(V) IS KNOWN BY THE VICTIM BUT DOES NOT MEET THE CRITERIA PROVIDED IN SUBSECTIONS (4)(C)(I) THROUGH (4)(C)(IV).

~~(4)~~(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

~~(5)~~(6) As used in ~~subsection~~ subsections (3) and (4), an act "in the course of committing sexual

intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

SECTION 7. SECTION 45-5-507, MCA, IS AMENDED TO READ:

"45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) ~~A~~ Except as provided in subsections (4) and (5), a person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed $50,000.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000.

(5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (5)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (5), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (5)(a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse without consent for which the person is being sentenced under subsection (5)(a) of this section;

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; or

(v) is known by the victim but does not meet the criteria provided in subsections (5)(c)(i) through (5)(c)(iv).

~~(5)~~(6) In addition to any sentence imposed under subsection (3), (4), or ~~(4)~~ (5), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

SECTION 8. SECTION 45-5-512, MCA, IS AMENDED TO READ:

"45-5-512. Chemical treatment of sex offenders. (1) A person convicted of a first offense under 45-5-502(3) or (4), 45-5-503(3), or 45-5-507(4) or (5) may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4) of this section.

(2) A person convicted of a second or subsequent offense under 45-5-502(3) or (4), 45-5-503, or 45-5-507 may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4) of this section.

(3) A person convicted of a first or subsequent offense under 45-5-502, 45-5-503, or 45-5-507 who is not sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, may voluntarily undergo such treatment, which must be administered by the department of corrections or its agent and paid for by the

department of corrections.

(4) Treatment under subsection (1) or (2) must begin 1 week before release from confinement and must continue until the department of corrections determines that the treatment is no longer necessary. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years.

(5) Prior to chemical treatment under this section, the person must be fully medically informed of its effects.

(6) A state employee who is a professional medical person may not be compelled against the employee's wishes to administer chemical treatment under this section."

Section 9. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication as defined in 45-8-213, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated.

(2) (a) ~~A~~ Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than $10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a ~~sex~~ sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (4), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (4)(a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing the offense for which the person is being sentenced under subsection (4)(a); ~~or~~

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; OR

(V) IS KNOWN BY THE VICTIM BUT DOES NOT MEET THE CRITERIA PROVIDED IN SUBSECTIONS (4)(C)(I) THROUGH (4)(C)(IV)."

Section 10. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required. (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, ~~or~~ 45-5-627, or 46-23-507 if the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) The court shall order a presentence report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a $50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under ~~53-1-203(4)~~ 53-1-203(5)."

Section 11. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years

of the commitment to the department of corrections must be suspended, except as provided in 45-5-502(4), 45-5-503(4), 45-5-507(5), and 45-5-625(4); or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of ~~sex~~ sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) of this section may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(p) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 12. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

(a) prohibition of the offender's holding public office;

(b) prohibition of the offender's owning or carrying a dangerous weapon;

(c) restrictions on the offender's freedom of association;

(d) restrictions on the offender's freedom of movement;

(e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;

(f) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

~~(3) An offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison shall enroll in and complete the educational phase of the prison's sexual offender program.~~"

Section 13. Section 46-18-203, MCA, is amended to read:

"**46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, ~~or~~ any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to 45-5-502(4), 45-5-503(4), 45-5-507(5), or 45-5-625(4), the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested

pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

(i) the terms and conditions of the suspended or deferred sentence; or

(ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-502(4), 45-5-503(4), 45-5-507(5), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 14. Section 46-18-205, MCA, is amended to read:

"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension. (1) If the victim was less than 16 years ~~old~~ of age, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-505, deviate sexual conduct; or

(d) 45-5-507, incest.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

(a) 45-5-103(4), mitigated deliberate homicide;

(b) 45-5-202, aggravated assault;

(c) 45-5-302(2), kidnapping;

(d) 45-5-303(2), aggravated kidnapping;

(e) 45-5-401(2), robbery;

(f) 45-5-502(3), sexual assault;

(g) 45-5-503(2) and (3), sexual intercourse without consent;

(h) 45-5-603, aggravated promotion of prostitution;

(i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;

(j) 45-9-102(4), criminal possession of dangerous drugs; and

(k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

(4) The provisions of this section do not apply to sentences imposed pursuant to 45-5-502(4), 45-5-503(4), 45-5-507(5), or 45-5-625(4)."

Section 15. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-213, assault with a weapon;

(iv) 45-5-302(2), kidnapping;

(v) 45-5-303(2), aggravated kidnapping;

(vi) 45-5-401(2), robbery;

(vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault, AND 45-5-502(4), SEXUAL ASSAULT WHEN THE VICTIM IS 12 YEARS OF AGE OR YOUNGER AND THE OFFENDER IS 18 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE AND THE TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE OFFENDER IS A SEXUAL PREDATOR OF CHILDREN;

(viii) 45-5-503(2) ~~and (3)~~ through (4), sexual intercourse without consent~~; and~~;

(IX) 45-5-507(5), INCEST WHEN THE VICTIM IS 12 YEARS OF AGE OR YOUNGER AND THE OFFENDER IS 18 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE AND THE TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE OFFENDER IS A SEXUAL PREDATOR OF CHILDREN;

(X) 45-5-625(4), sexual abuse of children by a sexual predator of children;

~~(ix)~~(XI) 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal possession with intent to distribute a dangerous drug;

~~(x)~~(XII) 45-9-102(4), criminal possession of an opiate;

~~(xi)~~(XIII) 45-9-103(2), criminal possession of an opiate with an intent to distribute; and

~~(xii)~~(XIV) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed $50,000."

Section 16. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

~~(3)~~(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(4)~~(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(5)~~(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

~~(6)~~(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502(3) (IF THE VICTIM IS LESS THAN 16 YEARS OF AGE AND THE OFFENDER IS 3 OR MORE YEARS OLDER THAN THE VICTIM), 45-5-502(4) (IF THE VICTIM IS 12 YEARS OF AGE OR YOUNGER AND THE OFFENDER IS 18 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE AND THE TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE OFFENDER IS A SEXUAL PREDATOR OF CHILDREN), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim OR IF THE VICTIM IS 12 YEARS OF AGE OR YOUNGER AND THE OFFENDER IS 18 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE AND THE TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE OFFENDER IS A SEXUAL PREDATOR OF CHILDREN), 45-5-603(1)(b), or 45-5-625; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection ~~(6)(a)~~ (9)(a) or for which the offender was required to register as a ~~sex~~ sexual offender after conviction.

~~(7)~~(10) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

~~(8)~~(11) "Sexually violent predator" means a person who:

(a) has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses~~.~~; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

~~(9)~~(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (13)(a)."

Section 17. Section 46-23-504, MCA, is amended to read:

"46-23-504. Persons required to register -- procedure. (1) ~~A~~ Except as provided in 41-5-1513, a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within ~~10~~ 3 business days of entering a county of this state for the purpose of residing or setting up a temporary ~~domicile~~ residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection (1)(a), ~~or~~ (1)(c), or (1)(d) must be with the ~~chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever law enforcement official the offender registers with~~ appropriate registration agency. If an offender registers with a police department, the department shall notify the ~~other official~~ sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate ~~law enforcement~~

registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through (3)(g) and any other information required by the department of justice. The ~~chief of police or sheriff~~ registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days, the ~~chief of police or sheriff~~ registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The information collected from the offender at the time of registration must include the:

(a) name of the offender and any aliases used by the offender;

(b) offender's social security number;

(c) residence information required by subsection (4);

(d) name and address of any business or other place where the offender is or will be an employee;

(e) name and address of any school where the offender will be a student;

(f) offender's driver's license number; and

(g) description and license number of any motor vehicle owned or operated by the offender.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the registration agency may require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through (3)(g). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

~~(4)~~(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509; ~~and~~

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

~~(ii)~~(iii) each year to a violent offender or an offender designated as a level 1 ~~or level 2~~ offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

~~(b)~~(c) The form must require the offender's ~~current address and~~ notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the ~~department~~ registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

~~(5)~~(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

~~(6)~~(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 18. Section 46-23-505, MCA, is amended to read:

"46-23-505. Notice of change of ~~address~~ name or residence or student, employment, or transient status -- duty to inform -- forwarding of information. (1) If an offender required to register under this part has a change of ~~address~~ name or residence or a change in student, employment, or transient status, the offender shall within ~~10~~ 3 business days of the change ~~give written~~ appear in person and give notification of the ~~new address~~ change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the ~~department and to the chief of police of the municipality or sheriff of the county~~ registration agency for the county or municipality from which the offender is moving. ~~The agency or department shall, within 3 days after receipt of the new address, forward it to the department of justice, which shall forward a copy of the new address and photograph to the sheriff having jurisdiction over the new address and to the chief of police of the municipality of the new address if the new address is in a municipality.~~

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality."

Section 19. Section 46-23-506, MCA, is amended to read:

"46-23-506. Duration of registration. (1) A sexual offender required to register under this part shall register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time during which the offender is in prison.

(2) A violent offender required to register under this part shall register:

(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing, but the offender is not relieved of the duty to register until a petition is granted under subsection (3)(a); or

(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as provided in subsection (3)(b).

(3) (a) An offender required to register for 10 years under subsection (2)(a) may, after the 10 years have passed, petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. The petition must be granted if the defendant has not been convicted under subsection (2)(b).

(b) Except as provided in subsection (5), at any time after 10 years of registration for a level 1 sexual

offender and at any time after 25 years of registration for a level 2 sexual offender, an offender ~~required to register for life~~ may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(i) the offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under subsection (3)(b) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

(5) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 20. Section 46-23-508, MCA, is amended to read:

"46-23-508. Dissemination of information. (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information,

as defined in 44-5-103; and

(b) ~~a law enforcement~~ the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall, and the registration agency may, disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

~~(i)~~(ii) if an offender was given a level 1 designation under 46-23-509, ~~the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;~~ the department of justice shall, and the registration agency may, disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; and

(D) the offenses for which the offender is required to register under this part;

~~(ii)~~(iii) if an offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall, and the registration agency ~~with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of~~ may, disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any vehicle owned or operated by the offender;

~~(D)~~(F) the offenses for which the offender is required to register under this part; and

~~(E)~~(G) any conditions imposed by the court upon the offender for the safety of the public; and

~~(iii)~~(iv) if an offender was given a level 3 designation under 46-23-509, the department of justice and the

registration agency shall give the victim and the public notification that includes the information contained in subsection ~~(1)(b)(ii)~~ (1)(b)(iii). The ~~agency shall~~ notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and ~~shall~~ must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a ~~law enforcement~~ registration agency may, in its sole discretion, request an in camera review by a district court of the determination by the ~~law enforcement~~ registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a ~~law enforcement~~ registration agency without the permission of the victim.

(3) ~~A state or local law enforcement agency may use the internet to disseminate the information allowed by this section to the public.~~ Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 21. Section 46-23-509, MCA, is amended to read:

"46-23-509. Sexual offender evaluations and designations -- rulemaking authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual

offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (6) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(6) If an offense is covered by 46-23-502~~(6)(b)~~(9)(b), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government.

(7) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section."

Section 22. Section 46-23-1011, MCA, is amended to read:

"46-23-1011. Supervision on probation. (1) The department shall supervise probationers during their probation period, including supervision after release from imprisonment imposed pursuant to 45-5-502(4), 45-5-503(4), 45-5-507(5), or 45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing.

The probationer has the right to counsel as provided in chapter 8 of this title.

(2) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court ~~must~~ shall hold a hearing pursuant to the provisions of 46-18-203.

(e) ~~The~~ Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-502(4), 45-5-503(4), 45-5-507(5), or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(5) (a) Upon recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection (5)(a) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the sentencing judge that the workload of a district probation and parole

office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 23. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for the siting, establishment, and expansion of prerelease centers, rules for the establishment and maintenance of residential methamphetamine treatment programs, ~~rules for the establishment and maintenance of a residential sexual offender treatment program;~~ and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The

centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

~~(iii) a residential sexual offender treatment program.~~

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of intervention and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of intervention and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention and who are committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) THE DEPARTMENT MAY CONTRACT WITH PRIVATE, NONPROFIT OR FOR-PROFIT MONTANA CORPORATIONS TO ESTABLISH AND MAINTAIN A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM. IF THE DEPARTMENT INTENDS TO

CONTRACT FOR THAT PURPOSE, THE DEPARTMENT SHALL ADOPT RULES FOR THE ESTABLISHMENT AND MAINTENANCE OF THAT PROGRAM.

~~(2)~~(3) The department and a private, nonprofit OR FOR-PROFIT Montana corporation may not enter into a contract under subsection (1)(c) OR (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) OR (2). Prior to entering into a contract for a period of 10 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

~~(3)~~(4) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth correctional facilities.

~~(4)~~(5) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing."

NEW SECTION. **Section 24. Sexual offender treatment.** (1) Upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.

(2) The court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:

(a) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program; and

(b) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509 or is a sexually violent predator as defined in 46-23-502, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program.

(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's

sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

(4) (a) Except for an offender sentenced pursuant to 45-5-502(4), 45-5-503(4), 45-5-507(5), or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.

(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.

(5) If a person's sentence is suspended pursuant to subsection (4)(b), during the suspended portion of the sentence the person:

(a) shall abide by the standard conditions of probation established by the department of corrections;

(b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is financially able to pay those costs;

(c) may have no contact with the victim or the victim's immediate family unless approved by the victim or the victim's parent or guardian, the person's therapists, and the person's probation officer;

(d) shall comply with all requirements and conditions of sexual offender treatment as directed by the person's sex offender therapist;

(e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(f) may not consume alcoholic beverages;

(g) shall enter and remain in an aftercare program as directed by the person's probation officer;

(h) shall submit to random or routine drug and alcohol testing;

(i) may not possess pornographic material or access pornography through the internet; and

(j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or continuous satellite monitoring.

(6) The sentencing of a sexual offender is subject to 46-18-219.

(7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a sexual offender to impose any part of a sentence that was previously suspended.

NEW SECTION. **Section 25. Codification instruction.** [Section ~~20~~ 24] is intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to [section ~~20~~ 24].

NEW SECTION. **Section 26. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 27. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 28. Retroactive applicability.** [Sections 2, 3, and ~~12~~ 16 through ~~17~~ 21] apply retroactively, within the meaning of 1-2-109, to:

(1) sexual offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after July 1, 1989; and

(2) violent offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after October 1, 1995.

- END -

SENATE BILL NO. 547

INTRODUCED BY PERRY, CURTISS, PEASE, WILLIAMS, BALES, JUNEAU, STAPLETON, JENT, WANZENRIED, MOSS, LASLOVICH, COONEY, MCGEE, BROWN, BARKUS, LAIBLE, GILLAN, BLACK, BRUEGGEMAN, ELLIOTT, ESSMANN, GEBHARDT, HARRINGTON, JACKSON, LARSON, LEWIS, LIND, J. PETERSON, RYAN, SCHMIDT, SMITH, SQUIRES, STEINBEISSER, STORY, TASH, WEINBERG

BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT STRENGTHENING THE REGISTRATION REQUIREMENTS AND OTHER PROVISIONS APPLICABLE TO SEXUAL OFFENDERS; AMENDING PROVISIONS GOVERNING YOUTH COURT, CRIMINAL PROSECUTION AND PENALTIES, DEFINITIONS, PROBATION AND PAROLE, REGISTRATION OF TRANSIENTS, AND DISSEMINATION OF INFORMATION ABOUT SEXUAL OFFENDERS; ~~REQUIRING~~ ALLOWING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM; AMENDING SECTIONS 41-5-206, 41-5-216, 41-5-1513, 45-1-205, 45-5-502, 45-5-503, 45-5-507, 45-5-512, 45-5-601, 45-5-602, 45-5-603, 45-5-625, 46-18-111, 46-18-201, 46-18-202, 46-18-203, 46-18-205, 46-18-231, 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, 46-23-509, 46-23-1011, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) sexual assault as provided in 45-5-502(3) OR (4);

~~(iv)~~(v) assault with a weapon as defined in 45-5-213;

~~(v)~~(vi) robbery as defined in 45-5-401;

~~(vi)~~(vii) burglary or aggravated burglary as defined in 45-6-204;

~~(vii)~~(viii) aggravated kidnapping as defined in 45-5-303;

~~(viii)~~(ix) possession of explosives as defined in 45-8-335;

~~(ix)~~(x) criminal distribution of dangerous drugs as defined in 45-9-101;

~~(x)~~(xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);

~~(xi)~~(xii) criminal possession with intent to distribute as defined in 45-9-103(1);

~~(xii)~~(xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

~~(xiii)~~(xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership~~,~~ as defined in 45-8-403;

~~(xiv)~~(xv) escape as defined in 45-7-306;

~~(xv)~~(xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through ~~(1)(b)(xiv)~~ (1)(b)(xv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless

the district court finds, by a preponderance of the evidence, that:

(a) a youth court proceeding and disposition will serve the interests of community protection;

(b) the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

Section 2. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of youth court, law enforcement, and department records. (1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under

subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, ~~or~~ reports referred to in 45-5-624(7), or the information referred to in 46-23-508, in any instance in which the youth was required to register, pursuant to Title 46, chapter 23, part 5, as a sexual offender.

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may ~~only~~ be inspected only pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was ~~only~~ involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(9) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section."

Section 3. Section 41-5-1513, MCA, is amended to read:

"41-5-1513. Disposition -- delinquent youth -- restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register and remain registered as a sexual or violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection to ensure registration compliance. The court:

(i) shall, prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-18-111;

(ii) if the court requires the youth to register as a sexual offender, shall designate the youth's risk level pursuant to 46-23-509.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a ~~sex~~ sexual offense, the youth court ~~may~~ SHALL require completion of ~~sex~~ sexual offender treatment ~~before a youth is discharged~~.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel."

SECTION 4. SECTION 45-1-205, MCA, IS AMENDED TO READ:

"45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) or (5) may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(c) A prosecution under 45-5-504, 45-5-505, 45-5-507(1), (2), (3), or ~~(5)~~ (6), 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer

becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

SECTION 5. SECTION 45-5-502, MCA, IS AMENDED TO READ:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) ~~A~~ Except as provided in subsections (3) and (4), a person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is ~~3~~ 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be

punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than $50,000.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall, upon a second or subsequent offense punishable pursuant to this subsection (4)(a), be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (4), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (4)(a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse without consent for which the person is being sentenced under subsection (4)(a) of this section;

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; or

(v) is known by the victim but does not meet the criteria in subsections (4)(c)(i) through (4)(c)(iv).

~~(4)~~(5) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

~~(5)~~(6) Consent is ineffective under this section if:

(a) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority

over the victim, unless the act is part of a lawful search; or

(b) the victim is less than 14 years old and the offender is 3 or more years older than the victim."

Section 6. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219, ~~and~~ 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is ~~3~~ 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall

be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed $50,000, or both.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (4), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (4)(a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse without consent for which the person is being sentenced under subsection (4)(a); ~~or~~

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; OR

(V) IS KNOWN BY THE VICTIM BUT DOES NOT MEET THE CRITERIA PROVIDED IN SUBSECTIONS (4)(C)(I) THROUGH (4)(C)(IV).

~~(4)~~(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

~~(5)~~(6) As used in ~~subsection~~ subsections (3) and (4), an act "in the course of committing sexual

intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

SECTION 7. SECTION 45-5-507, MCA, IS AMENDED TO READ:

"45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) ~~A~~ Except as provided in subsections (4) and (5), a person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed $50,000.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000.

(5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (5)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (5), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (5)(a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse without consent for which the person is being sentenced under subsection (5)(a) of this section;

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; or

(v) is known by the victim but does not meet the criteria provided in subsections (5)(c)(i) through (5)(c)(iv).

~~(5)~~(6) In addition to any sentence imposed under subsection (3), (4), or ~~(4)~~ (5), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

SECTION 8. SECTION 45-5-512, MCA, IS AMENDED TO READ:

"45-5-512. Chemical treatment of sex offenders. (1) A person convicted of a first offense under 45-5-502(3) or (4), 45-5-503(3), or 45-5-507(4) or (5) may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4) of this section.

(2) A person convicted of a second or subsequent offense under 45-5-502(3) or (4), 45-5-503, or 45-5-507 may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4) of this section.

(3) A person convicted of a first or subsequent offense under 45-5-502, 45-5-503, or 45-5-507 who is not sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, may voluntarily undergo such treatment, which must be administered by the department of corrections or its agent and paid for by the

department of corrections.

(4) Treatment under subsection (1) or (2) must begin 1 week before release from confinement and must continue until the department of corrections determines that the treatment is no longer necessary. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years.

(5) Prior to chemical treatment under this section, the person must be fully medically informed of its effects.

(6) A state employee who is a professional medical person may not be compelled against the employee's wishes to administer chemical treatment under this section."

SECTION 9. SECTION 45-5-601, MCA, IS AMENDED TO READ:

"45-5-601. Prostitution. (1) A person commits the offense of prostitution if the person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether ~~such~~ the compensation is received or to be received or paid or to be paid.

(2) (a) A prostitute convicted of prostitution shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) ~~A~~ Except as provided in subsection (3), a prostitute's client who is convicted of prostitution shall for the first offense be fined an amount not to exceed $1,000 or be imprisoned for a term not to exceed 1 year, or both, and for a second or subsequent offense shall be fined an amount not to exceed $10,000 or be imprisoned for a term not to exceed 5 years, or both.

(3) (a) If the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

SECTION 10. SECTION 45-5-602, MCA, IS AMENDED TO READ:

"45-5-602. Promoting prostitution. (1) A person commits the offense of promoting prostitution if the person purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

(b) procures an individual for a house of prostitution or a place in a house of prostitution for an individual;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(d) solicits clients for another person who is a prostitute;

(e) procures a prostitute for a patron;

(f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of an individual engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) ~~A~~ Except as provided in subsection (3), a person convicted of promoting prostitution shall be fined an amount not to exceed $50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(3) (a) If the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

SECTION 11. SECTION 45-5-603, MCA, IS AMENDED TO READ:

"45-5-603. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if the person purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child under the age of 18 years, whether or not the person is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support the person is responsible.

(2) (a) Except as provided in ~~subsection~~ subsections (2)(b) and (2)(c), a person convicted of aggravated promotion of prostitution shall be punished by:

(i) life imprisonment; or

(ii) imprisonment in a state prison for a term not to exceed 20 years or a fine in an amount not to exceed $50,000, or both.

(b) Except as provided in 46-18-219 and 46-18-222, a person convicted of aggravated promotion of prostitution of a child, who at the time of the offense is under 18 years of age, shall be punished by:

(i) life imprisonment; or

(ii) imprisonment in a state prison for a term of not less than 4 years or more than 100 years or a fine in an amount not to exceed $100,000, or both.

(c) (i) If the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense, the offender:

(A) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (2)(c)(i)(A) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(B) may be fined an amount not to exceed $50,000; and

(C) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(ii) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

Section 12. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication as defined in 45-8-213, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated.

(2) (a) ~~A~~ Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than $10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the

offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a ~~sex~~ sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (4), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (4)(a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing the offense for which the person is being sentenced under subsection (4)(a); ~~or~~

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; OR

(V) IS KNOWN BY THE VICTIM BUT DOES NOT MEET THE CRITERIA PROVIDED IN SUBSECTIONS (4)(C)(I) THROUGH (4)(C)(IV)."

Section 13. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required. (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, ~~or~~ 45-5-627, 45-5-601(3), 45-5-602(3), 45-5-603(2)(C), or IF THE DEFENDANT WAS CONVICTED UNDER 46-23-507 ~~if~~ AND the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) The court shall order a presentence report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a $50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under ~~53-1-203(4)~~

53-1-203(5)."

Section 14. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-502(4), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4); or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense

enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of ~~sex~~ sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) of this section may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(p) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 15. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

(a) prohibition of the offender's holding public office;

(b) prohibition of the offender's owning or carrying a dangerous weapon;

(c) restrictions on the offender's freedom of association;

(d) restrictions on the offender's freedom of movement;

(e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;

(f) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

~~(3) An offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison shall enroll in and complete the educational phase of the prison's sexual offender program.~~"

Section 16. Section 46-18-203, MCA, is amended to read:

"**46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, ~~or~~ any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to 45-5-502(4), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

(i) the terms and conditions of the suspended or deferred sentence; or

(ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-502(4), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time

served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 17. Section 46-18-205, MCA, is amended to read:

"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension. (1) If the victim was less than 16 years ~~old~~ of age, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-505, deviate sexual conduct; or

(d) 45-5-507, incest.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

(a) 45-5-103(4), mitigated deliberate homicide;

(b) 45-5-202, aggravated assault;

(c) 45-5-302(2), kidnapping;

(d) 45-5-303(2), aggravated kidnapping;

(e) 45-5-401(2), robbery;

(f) 45-5-502(3), sexual assault;

(g) 45-5-503(2) and (3), sexual intercourse without consent;

(h) 45-5-603, aggravated promotion of prostitution;

(i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;

(j) 45-9-102(4), criminal possession of dangerous drugs; and

(k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

(4) The provisions of this section do not apply to sentences imposed pursuant to 45-5-502(4), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4)."

Section 18. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-213, assault with a weapon;

(iv) 45-5-302(2), kidnapping;

(v) 45-5-303(2), aggravated kidnapping;

(vi) 45-5-401(2), robbery;

(vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault, AND 45-5-502(4), SEXUAL ASSAULT WHEN THE VICTIM IS 12 YEARS OF AGE OR YOUNGER AND THE OFFENDER IS 18 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE AND THE TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE OFFENDER IS A SEXUAL PREDATOR OF CHILDREN;

(viii) 45-5-503(2) ~~and (3)~~ through (4), sexual intercourse without consent~~; and~~;

(IX) 45-5-507(5), INCEST WHEN THE VICTIM IS 12 YEARS OF AGE OR YOUNGER AND THE OFFENDER IS 18 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE AND THE TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE OFFENDER IS A SEXUAL PREDATOR OF CHILDREN;

(X) 45-5-601(3), 45-5-602(3), OR 45-5-603(2)(C), PROSTITUTION, PROMOTION OF PROSTITUTION, OR AGGRAVATED PROMOTION OF PROSTITUTION WHEN THE PROSTITUTE WAS 12 YEARS OF AGE OR YOUNGER AND THE PROSTITUTE'S CLIENT WAS 18 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE;

~~(X)~~(XI) 45-5-625(4), sexual abuse of children by a sexual predator of children;

~~(IX)~~~~(XI)~~(XII) 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal possession with intent to distribute a dangerous drug;

~~(X)~~~~(XII)~~(XIII) 45-9-102(4), criminal possession of an opiate;

~~(XI)~~~~(XIII)~~(XIV) 45-9-103(2), criminal possession of an opiate with an intent to distribute; and

~~(XII)~~~~(XIV)~~(XV) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed $50,000."

Section 19. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

~~(3)~~(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(4)~~(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(5)~~(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

~~(6)~~(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502(3) (IF THE VICTIM IS LESS THAN 16 YEARS OF AGE AND THE OFFENDER IS 3 OR MORE YEARS OLDER THAN THE VICTIM), 45-5-502(4) (IF THE VICTIM IS 12 YEARS OF AGE OR YOUNGER AND THE OFFENDER IS 18 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE AND THE TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE OFFENDER IS A SEXUAL PREDATOR OF CHILDREN), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim OR IF THE VICTIM IS 12 YEARS OF AGE OR YOUNGER AND THE OFFENDER IS 18 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE AND THE TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE OFFENDER IS A SEXUAL PREDATOR OF CHILDREN), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) OR (2)(c), or 45-5-625; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection ~~(6)(a)~~ (9)(a) or for which the offender was required to register as a ~~sex~~ sexual offender after conviction.

~~(7)~~(10) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

~~(8)~~(11) "Sexually violent predator" means a person who:

(a) has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses~~.~~; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

~~(9)~~(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (13)(a)."

Section 20. Section 46-23-504, MCA, is amended to read:

"46-23-504. Persons required to register -- procedure. (1) ~~A~~ Except as provided in 41-5-1513, a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within ~~10~~ 3 business days of entering a county of this state for the purpose of residing or setting up a temporary ~~domicile~~ residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection (1)(a), ~~or~~ (1)(c), or (1)(d) must be with the ~~chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever law enforcement official the offender registers with~~ appropriate registration agency. If an offender registers with a police department, the department shall notify the ~~other official~~ sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate ~~law enforcement~~

registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through (3)(g) and any other information required by the department of justice. The ~~chief of police or sheriff~~ registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days, the ~~chief of police or sheriff~~ registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The information collected from the offender at the time of registration must include the:

(a) name of the offender and any aliases used by the offender;

(b) offender's social security number;

(c) residence information required by subsection (4);

(d) name and address of any business or other place where the offender is or will be an employee;

(e) name and address of any school where the offender will be a student;

(f) offender's driver's license number; and

(g) description and license number of any motor vehicle owned or operated by the offender.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the registration agency may require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through (3)(g). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

~~(4)~~(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509; ~~and~~

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

~~(ii)~~(iii) each year to a violent offender or an offender designated as a level 1 ~~or level 2~~ offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

~~(b)~~(c) The form must require the offender's ~~current address and~~ notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the ~~department~~ registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

~~(5)~~(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

~~(6)~~(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 21. Section 46-23-505, MCA, is amended to read:

"46-23-505. Notice of change of ~~address~~ name or residence or student, employment, or transient status -- duty to inform -- forwarding of information. (1) If an offender required to register under this part has a change of ~~address~~ name or residence or a change in student, employment, or transient status, the offender shall within ~~10~~ 3 business days of the change ~~give written~~ appear in person and give notification of the ~~new address~~ change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the ~~department and to the chief of police of the municipality or sheriff of the county~~ registration agency for the county or municipality from which the offender is moving. ~~The agency or department shall, within 3 days after receipt of the new address, forward it to the department of justice, which shall forward a copy of the new address and photograph to the sheriff having jurisdiction over the new address and to the chief of police of the municipality of the new address if the new address is in a municipality.~~

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality."

Section 22. Section 46-23-506, MCA, is amended to read:

"46-23-506. Duration of registration. (1) A sexual offender required to register under this part shall register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time during which the offender is in prison.

(2) A violent offender required to register under this part shall register:

(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing, but the offender is not relieved of the duty to register until a petition is granted under subsection (3)(a); or

(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as provided in subsection (3)(b).

(3) (a) An offender required to register for 10 years under subsection (2)(a) may, after the 10 years have passed, petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. The petition must be granted if the defendant has not been convicted under subsection (2)(b).

(b) Except as provided in subsection (5), at any time after 10 years of registration for a level 1 sexual

offender and at any time after 25 years of registration for a level 2 sexual offender, an offender ~~required to register for life~~ may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(i) the offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under subsection (3)(b) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

(5) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 23. Section 46-23-508, MCA, is amended to read:

"46-23-508. Dissemination of information. (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information,

as defined in 44-5-103; and

(b) ~~a law enforcement~~ the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall, and the registration agency may, disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

~~(i)~~(ii) if an offender was given a level 1 designation under 46-23-509, ~~the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;~~ the department of justice shall, and the registration agency may, disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; and

(D) the offenses for which the offender is required to register under this part;

~~(ii)~~(iii) if an offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall, and the registration agency ~~with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of~~ may, disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any vehicle owned or operated by the offender;

~~(D)~~(F) the offenses for which the offender is required to register under this part; and

~~(E)~~(G) any conditions imposed by the court upon the offender for the safety of the public; and

~~(iii)~~(iv) if an offender was given a level 3 designation under 46-23-509, the department of justice and the

registration agency shall give the victim and the public notification that includes the information contained in subsection ~~(1)(b)(ii)~~ (1)(b)(iii). The ~~agency shall~~ notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and ~~shall~~ must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a ~~law enforcement~~ registration agency may, in its sole discretion, request an in camera review by a district court of the determination by the ~~law enforcement~~ registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a ~~law enforcement~~ registration agency without the permission of the victim.

(3) ~~A state or local law enforcement agency may use the internet to disseminate the information allowed by this section to the public.~~ Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 24. Section 46-23-509, MCA, is amended to read:

"46-23-509. Sexual offender evaluations and designations -- rulemaking authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual

offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (6) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(6) If an offense is covered by 46-23-502~~(6)(b)~~(9)(b), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government.

(7) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section."

Section 25. Section 46-23-1011, MCA, is amended to read:

"46-23-1011. Supervision on probation. (1) The department shall supervise probationers during their probation period, including supervision after release from imprisonment imposed pursuant to 45-5-502(4), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer

must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court ~~must~~ shall hold a hearing pursuant to the provisions of 46-18-203.

(e) ~~The~~ Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-502(4), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(5) (a) Upon recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection (5)(a) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the sentencing judge that the workload of a district probation and parole

office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 26. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for the siting, establishment, and expansion of prerelease centers, rules for the establishment and maintenance of residential methamphetamine treatment programs, ~~rules for the establishment and maintenance of a residential sexual offender treatment program;~~ and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The

centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

~~(iii) a residential sexual offender treatment program.~~

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of intervention and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of intervention and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention and who are committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) THE DEPARTMENT MAY CONTRACT WITH PRIVATE, NONPROFIT OR FOR-PROFIT MONTANA CORPORATIONS TO ESTABLISH AND MAINTAIN A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM. IF THE DEPARTMENT INTENDS TO

CONTRACT FOR THAT PURPOSE, THE DEPARTMENT SHALL ADOPT RULES FOR THE ESTABLISHMENT AND MAINTENANCE OF THAT PROGRAM.

~~(2)~~(3) The department and a private, nonprofit OR FOR-PROFIT Montana corporation may not enter into a contract under subsection (1)(c) OR (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) OR (2). Prior to entering into a contract for a period of 10 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

~~(3)~~(4) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth correctional facilities.

~~(4)~~(5) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing."

~~NEW SECTION.~~ **~~Section 24. Sexual offender treatment.~~** ~~(1) Upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.~~

~~(2) The court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:~~

~~(a) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program; and~~

~~(b) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509 or is a sexually violent predator as defined in 46-23-502, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program.~~

~~(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's~~

~~sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.~~

~~(4) (a) Except for an offender sentenced pursuant to 45-5-502(4), 45-5-503(4), 45-5-507(5), or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.~~

~~(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.~~

~~(5) If a person's sentence is suspended pursuant to subsection (4)(b), during the suspended portion of the sentence the person:~~

~~(a) shall abide by the standard conditions of probation established by the department of corrections;~~

~~(b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is financially able to pay those costs;~~

~~(c) may have no contact with the victim or the victim's immediate family unless approved by the victim or the victim's parent or guardian, the person's therapists, and the person's probation officer;~~

~~(d) shall comply with all requirements and conditions of sexual offender treatment as directed by the person's sex offender therapist;~~

~~(e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;~~

~~(f) may not consume alcoholic beverages;~~

~~(g) shall enter and remain in an aftercare program as directed by the person's probation officer;~~

~~(h) shall submit to random or routine drug and alcohol testing;~~

~~(i) may not possess pornographic material or access pornography through the internet; and~~

~~(j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or continuous satellite monitoring.~~

~~(6) The sentencing of a sexual offender is subject to 46-18-219.~~

~~(7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a sexual offender to impose any part of a sentence that was previously suspended.~~

~~NEW SECTION. **Section 25. Codification instruction.** [Section 20 24] is intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to [section 20 24].~~

NEW SECTION. **Section 27. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 28. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 29. Retroactive applicability.** [Sections 2, 3, and ~~12 16~~ 19 through ~~17 21~~ 24] apply retroactively, within the meaning of 1-2-109, to:

(1) sexual offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after July 1, 1989; and

(2) violent offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after October 1, 1995.

- END -

FREE CONFERENCE COMMITTEE
on Senate Bill 547
Report No. 1, April 24, 2007

Mr. President and Mr. Speaker:

We, your Free Conference Committee met and considered **Senate Bill 547** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

For the Senate:

Sen. Jesse Laslovich Chair

Sen. Lynda Moss

Sen. Gary Perry

Amendment Coordinator

Secretary of the Senate

For the House:

Rep. John Parker

Rep. Penny Morgan

Rep. John Sinrud

And, recommend that **Senate Bill 547** (reference copy -- salmon) be amended as follows:

1. Title, line 14.
Following: "45-1-205,"
Strike: "45-5-502,"

2. Title, line 15.
Following: "46-18-205,"
Insert: "46-18-222,"

3. Page 2, line 8.
Following: "45-5-502(3)"
Strike: "OR (4)"

ADOPT

REJECT

Amendment # SB 547-1

871529FC.ssc

4. Page 6, line 13.
Following: "(c)"
Insert: "subject to the provisions of subsection (5),"

5. Page 6, line 14.
Following: "be a"
Strike: "sexual offense or"

6. Page 6, line 15.
Following: "as a"
Strike: "sexual or"

7. Page 6, line 16 through line 20.
Following: "compliance." on line 16
Strike: remainder of line 16 through line 20
Insert: "(d) in the case of a delinquent youth who has been adjudicated for a sexual offense, as defined in 46-23-502, and is required to register as a sexual offender pursuant to Title 46, chapter 23, part 5, exempt the youth from the duty to register if the court finds that:
(i) the youth has not previously been found to have committed or been adjudicated for a sexual offense, as defined in 46-23-502; and
(ii) registration is not necessary for protection of the public and that relief from registration is in the public's best interest;"
Renumber: subsequent subsections

8. Page 6, line 29.
Following: "offense"
Insert: ", as defined in 46-23-502"
Following: "SHALL"
Insert: ":
(a) prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-18-111;
(b) designate the youth's risk level pursuant to 46-23-509; and
(c)"

9. Page 7, line 7.
Following: line 6
Insert: "(5) The duration of registration for a youth who is required to register as a sexual or violent offender shall be as provided in 46-23-506, except that the court may, based on specific findings of fact, order a lesser duration of registration."

10. Page 8, line 24 through page 10, line 2.
Strike: section 5 in its entirety
Renumber: subsequent sections

11. Page 11, line 4 through line 5.
Following: "offense" on line 4
Strike: remainder of line 4 through "children" on line 5

12. Page 11, line 16 through line 25.
Strike: subsection (c) in its entirety

13. Page 12, line 19 through line 20.
Following: "offense" on line 19
Strike: remainder of line 19 through "children" on line 20

14. Page 13, line 1 through line 10.
Strike: subsection (c) in its entirety

15. Page 13, line 18.
Following: "45-5-502(3)"
Strike: "or (4)"

16. Page 13, line 22.
Following: "45-5-502(3)"
Strike: "or (4)"

17. Page 18, line 11 through line 12.
Following: "offense" on line 11
Strike: remainder of line 11 through "children" on line 12

18. Page 18, line 23 through page 19, line 2.
Strike: subsection (c) in its entirety

19. Page 20, line 28.
Strike: "45-5-502(4),"

20. Page 23, line 19.
Strike: "45-5-502(4),"

21. Page 24, line 15.
Strike: "45-5-502(4),"

22. Page 26, line 6.
Strike: "45-5-502(4),"

23. Page 26, line 8.
Following: line 7
Insert: **"Section 17.** Section 46-18-222, MCA, is amended to read:
"46-18-222. Exceptions to mandatory minimum sentences ~~and~~, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, ~~and~~ the restrictions on deferred imposition and suspended execution of sentence

prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4) and the judge determines, based on the findings contained in a sexual offender evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination.""

Renumber: subsequent sections

24. Page 26, line 23 through line 26.
Following: "assault" on line 23
Strike: remainder of line 23 through "CHILDREN" on line 26

25. Page 26, line 29 through line 30.
Following: "OFFENSE" on line 29
Strike: remainder of line 29 through "CHILDREN" on line 30

26. Page 27, line 4.
Following: "children"
Strike: "by a sexual predator of children"

27. Page 28, line 18 through line 20.
Following: "VICTIM)" on line 18
Strike: remainder of line 18 through "CHILDREN" on line 20

28. Page 28, line 23 through line 24.
Following: "OFFENSE" on line 23
Strike: remainder of line 23 through "CHILDREN" on line 24

29. Page 28, line 28.
Following: "after"
Insert: "an adjudication or"

30. Page 28, line 29.
Following: "convicted of"
Insert: " or, in youth court, found to have committed or been adjudicated for"

31. Page 29, line 2.
Following: "convicted of"
Insert: " or, in youth court, found to have committed or been adjudicated for"

32. Page 36, line 27.
Strike: "45-5-502(4),"

33. Page 37, line 17.
Strike: "45-5-502(4),"

34. Page 42, line 3.
Following: line 2
Insert: "NEW SECTION. **Section 27. Sexual offender treatment.** (1) Upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.

(2) (a) Except as provided in subsection (2)(b), the court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:

(i) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program;

(ii) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program; and

(iii) if the person is sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4) and is released on parole, remain in an outpatient sex offender treatment program for the remainder of the person's life.

(b) A person who has been sentenced to life imprisonment without possibility of release may not participate in treatment provided pursuant to this section.

(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sexual offender

treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

(4) (a) Except for an offender sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.

(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.

(5) If a person's sentence is suspended pursuant to subsection (4)(b), during the suspended portion of the sentence the person:

(a) shall abide by the standard conditions of probation established by the department of corrections;

(b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is financially able to pay those costs;

(c) may have no contact with the victim or the victim's immediate family unless approved by the victim or the victim's parent or guardian, the person's therapists, and the person's probation officer;

(d) shall comply with all requirements and conditions of sexual offender treatment as directed by the person's sex offender therapist;

(e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(f) may not consume alcoholic beverages;

(g) shall enter and remain in an aftercare program as directed by the person's probation officer;

(h) shall submit to random or routine drug and alcohol testing;

(i) may not possess pornographic material or access pornography through the internet; and

(j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or continuous satellite monitoring.

(6) The sentencing of a sexual offender is subject to 46-18-202(2) and 46-18-219.

(7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a sexual offender to impose any part of a sentence that was previously suspended."

Insert: "NEW SECTION. **Section 28. Codification instruction.** [Section 27] is intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18,

apply to [section 27]."

Renumber: subsequent sections

- END -

SENATE BILL NO. 547

INTRODUCED BY PERRY, CURTISS, PEASE, WILLIAMS, BALES, JUNEAU, STAPLETON, JENT, WANZENRIED, MOSS, LASLOVICH, COONEY, MCGEE, BROWN, BARKUS, LAIBLE, GILLAN, BLACK, BRUEGGEMAN, ELLIOTT, ESSMANN, GEBHARDT, HARRINGTON, JACKSON, LARSON, LEWIS, LIND, J. PETERSON, RYAN, SCHMIDT, SMITH, SQUIRES, STEINBEISSER, STORY, TASH, WEINBERG

BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT STRENGTHENING THE REGISTRATION REQUIREMENTS AND OTHER PROVISIONS APPLICABLE TO SEXUAL OFFENDERS; AMENDING PROVISIONS GOVERNING YOUTH COURT, CRIMINAL PROSECUTION AND PENALTIES, DEFINITIONS, PROBATION AND PAROLE, REGISTRATION OF TRANSIENTS, AND DISSEMINATION OF INFORMATION ABOUT SEXUAL OFFENDERS; ~~REQUIRING~~ ALLOWING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM; AMENDING SECTIONS 41-5-206, 41-5-216, 41-5-1513, 45-1-205, ~~45-5-502,~~ 45-5-503, 45-5-507, 45-5-512, 45-5-601, 45-5-602, 45-5-603, 45-5-625, 46-18-111, 46-18-201, 46-18-202, 46-18-203, 46-18-205, 46-18-222, 46-18-231, 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, 46-23-509, 46-23-1011, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

REFERENCE BILL: INCLUDES FREE CONFERENCE COMMITTEE REPORT DATED 04-24-07

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) sexual assault as provided in 45-5-502(3) ~~OR (4);~~

~~(iv)~~(v) assault with a weapon as defined in 45-5-213;

~~(v)~~(vi) robbery as defined in 45-5-401;

~~(vi)~~(vii) burglary or aggravated burglary as defined in 45-6-204;

~~(vii)~~(viii) aggravated kidnapping as defined in 45-5-303;

~~(viii)~~(ix) possession of explosives as defined in 45-8-335;

~~(ix)~~(x) criminal distribution of dangerous drugs as defined in 45-9-101;

~~(x)~~(xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);

~~(xi)~~(xii) criminal possession with intent to distribute as defined in 45-9-103(1);

~~(xii)~~(xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

~~(xiii)~~(xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership~~,~~ as defined in 45-8-403;

~~(xiv)~~(xv) escape as defined in 45-7-306;

~~(xv)~~(xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through ~~(1)(b)(xiv)~~ (1)(b)(xv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless

the district court finds, by a preponderance of the evidence, that:

(a) a youth court proceeding and disposition will serve the interests of community protection;

(b) the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

Section 2. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of youth court, law enforcement, and department records. (1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under

subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, ~~or~~ reports referred to in 45-5-624(7), or the information referred to in 46-23-508, in any instance in which the youth was required to register, pursuant to Title 46, chapter 23, part 5, as a sexual offender.

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may ~~only~~ be inspected only pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was ~~only~~ involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(9) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section."

Section 3. Section 41-5-1513, MCA, is amended to read:

"41-5-1513. Disposition -- delinquent youth -- restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) SUBJECT TO THE PROVISIONS OF SUBSECTION (5), require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a ~~sexual offense or~~ violent offense, as defined in 46-23-502, if committed by an adult, to register and remain registered as a ~~sexual or~~ violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection to ensure registration compliance. ~~The court:~~

~~(i) shall, prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-18-111;~~

~~(ii) if the court requires the youth to register as a sexual offender, shall designate the youth's risk level pursuant to 46-23-509.~~

(D) IN THE CASE OF A DELINQUENT YOUTH WHO HAS BEEN ADJUDICATED FOR A SEXUAL OFFENSE, AS DEFINED IN 46-23-502, AND IS REQUIRED TO REGISTER AS A SEXUAL OFFENDER PURSUANT TO TITLE 46, CHAPTER 23, PART 5, EXEMPT THE YOUTH FROM THE DUTY TO REGISTER IF THE COURT FINDS THAT:

(I) THE YOUTH HAS NOT PREVIOUSLY BEEN FOUND TO HAVE COMMITTED OR BEEN ADJUDICATED FOR A SEXUAL OFFENSE, AS DEFINED IN 46-23-502; AND

(II) REGISTRATION IS NOT NECESSARY FOR PROTECTION OF THE PUBLIC AND THAT RELIEF FROM REGISTRATION IS IN THE PUBLIC'S BEST INTEREST;

~~(d)~~(E) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of

subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

~~(e)~~(F) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a ~~sex~~ sexual offense, AS DEFINED IN 46-23-502, the youth court ~~may~~ SHALL:

(A) PRIOR TO DISPOSITION, ORDER A PSYCHOSEXUAL EVALUATION THAT MUST COMPLY WITH THE PROVISIONS OF 46-18-111;

(B) DESIGNATE THE YOUTH'S RISK LEVEL PURSUANT TO 46-23-509; AND

(C) require completion of ~~sex~~ sexual offender treatment ~~before a youth is discharged~~.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel.

(5) THE DURATION OF REGISTRATION FOR A YOUTH WHO IS REQUIRED TO REGISTER AS A SEXUAL OR VIOLENT OFFENDER SHALL BE AS PROVIDED IN 46-23-506, EXCEPT THAT THE COURT MAY, BASED ON SPECIFIC FINDINGS OF FACT, ORDER A LESSER DURATION OF REGISTRATION."

SECTION 4. SECTION 45-1-205, MCA, IS AMENDED TO READ:

"45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) or (5) may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age

if the victim was less than 18 years of age at the time that the offense occurred.

(c) A prosecution under 45-5-504, 45-5-505, 45-5-507(1), (2), (3), or ~~(5)~~ (6), 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following

the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

~~**SECTION 5.** SECTION 45-5-502, MCA, IS AMENDED TO READ:~~

~~**"45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.~~

~~(2) A Except as provided in subsections (3) and (4), a person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.~~

~~(3) If the victim is less than 16 years old and the offender is 3 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than $50,000.~~

~~(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:~~

~~(i) shall, upon a second or subsequent offense punishable pursuant to this subsection (4)(a), be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.~~

~~(ii) may be fined an amount not to exceed $50,000; and~~

~~(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.~~

~~(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate~~

~~in the program for continuous, satellite-based monitoring provided for in 46-23-1010.~~

~~(c) For purposes of this subsection (4), "sexual predator of children" means a person who:~~

~~(i) committed the offense for which the person is being sentenced under subsection (4)(a) against a stranger;~~

~~(ii) established or furthered a relationship with the victim for the primary purpose of victimization;~~

~~(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse without consent for which the person is being sentenced under subsection (4)(a) of this section;~~

~~(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; or~~

~~(v) is known by the victim but does not meet the criteria in subsections (4)(c)(i) through (4)(c)(iv).~~

~~(4)(5) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.~~

~~(5)(6) Consent is ineffective under this section if:~~

~~(a) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search; or~~

~~(b) the victim is less than 14 years old and the offender is 3 or more years older than the victim."~~

Section 5. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219, ~~and~~ 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is ~~3~~ 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219

and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed $50,000, or both.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense ~~and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children~~, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

~~(c) For purposes of this subsection (4), "sexual predator of children" means a person who:~~

~~(i) committed the offense for which the person is being sentenced under subsection (4)(a) against a stranger;~~

~~(ii) established or furthered a relationship with the victim for the primary purpose of victimization;~~

~~(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse without consent for which the person is being sentenced under subsection (4)(a); or~~

~~(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; OR~~

~~(v) IS KNOWN BY THE VICTIM BUT DOES NOT MEET THE CRITERIA PROVIDED IN SUBSECTIONS (4)(c)(i) THROUGH (4)(c)(iv).~~

~~(4)~~(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

~~(5)~~(6) As used in ~~subsection~~ subsections (3) and (4), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

SECTION 6. SECTION 45-5-507, MCA, IS AMENDED TO READ:

"45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) ~~A~~ Except as provided in subsections (4) and (5), a person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed $50,000.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished

by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000.

(5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense ~~and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children~~, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (5)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

~~(c) For purposes of this subsection (5), "sexual predator of children" means a person who:~~

~~(i) committed the offense for which the person is being sentenced under subsection (5)(a) against a stranger;~~

~~(ii) established or furthered a relationship with the victim for the primary purpose of victimization;~~

~~(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse without consent for which the person is being sentenced under subsection (5)(a) of this section;~~

~~(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; or~~

~~(v) is known by the victim but does not meet the criteria provided in subsections (5)(c)(i) through (5)(c)(iv).~~

~~(5)~~(6) In addition to any sentence imposed under subsection (3), (4), or ~~(4)~~ (5), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

SECTION 7. SECTION 45-5-512, MCA, IS AMENDED TO READ:

"45-5-512. Chemical treatment of sex offenders. (1) A person convicted of a first offense under 45-5-502(3) ~~or (4)~~, 45-5-503(3), or 45-5-507(4) or (5) may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4) of this section.

(2) A person convicted of a second or subsequent offense under 45-5-502(3) ~~or (4)~~, 45-5-503, or 45-5-507 may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4) of this section.

(3) A person convicted of a first or subsequent offense under 45-5-502, 45-5-503, or 45-5-507 who is not sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, may voluntarily undergo such treatment, which must be administered by the department of corrections or its agent and paid for by the department of corrections.

(4) Treatment under subsection (1) or (2) must begin 1 week before release from confinement and must continue until the department of corrections determines that the treatment is no longer necessary. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years.

(5) Prior to chemical treatment under this section, the person must be fully medically informed of its effects.

(6) A state employee who is a professional medical person may not be compelled against the employee's wishes to administer chemical treatment under this section."

SECTION 8. SECTION 45-5-601, MCA, IS AMENDED TO READ:

"45-5-601. Prostitution. (1) A person commits the offense of prostitution if the person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether ~~such~~ the compensation is received or to be received or paid or to be paid.

(2) (a) A prostitute convicted of prostitution shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) ~~A~~ Except as provided in subsection (3), a prostitute's client who is convicted of prostitution shall for the first offense be fined an amount not to exceed $1,000 or be imprisoned for a term not to exceed 1 year, or both, and for a second or subsequent offense shall be fined an amount not to exceed $10,000 or be imprisoned for a term not to exceed 5 years, or both.

(3) (a) If the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

SECTION 9. SECTION 45-5-602, MCA, IS AMENDED TO READ:

"45-5-602. Promoting prostitution. (1) A person commits the offense of promoting prostitution if the person purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

(b) procures an individual for a house of prostitution or a place in a house of prostitution for an individual;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(d) solicits clients for another person who is a prostitute;

(e) procures a prostitute for a patron;

(f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of an individual engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) ~~A~~ Except as provided in subsection (3), a person convicted of promoting prostitution shall be fined an amount not to exceed $50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(3) (a) If the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

SECTION 10. SECTION 45-5-603, MCA, IS AMENDED TO READ:

"45-5-603. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if the person purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child under the age of 18 years, whether or not the person is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support the person is responsible.

(2) (a) Except as provided in ~~subsection~~ subsections (2)(b) and (2)(c), a person convicted of aggravated

promotion of prostitution shall be punished by:

(i) life imprisonment; or

(ii) imprisonment in a state prison for a term not to exceed 20 years or a fine in an amount not to exceed $50,000, or both.

(b) Except as provided in 46-18-219 and 46-18-222, a person convicted of aggravated promotion of prostitution of a child, who at the time of the offense is under 18 years of age, shall be punished by:

(i) life imprisonment; or

(ii) imprisonment in a state prison for a term of not less than 4 years or more than 100 years or a fine in an amount not to exceed $100,000, or both.

(c) (i) If the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense, the offender:

(A) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (2)(c)(i)(A) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(B) may be fined an amount not to exceed $50,000; and

(C) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(ii) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

Section 11. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication as defined in

45-8-213, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated.

(2) (a) ~~A~~ Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than $10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a ~~sex~~ sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense ~~and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children~~, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender

is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

~~(c) For purposes of this subsection (4), "sexual predator of children" means a person who:~~

~~(i) committed the offense for which the person is being sentenced under subsection (4)(a) against a stranger;~~

~~(ii) established or furthered a relationship with the victim for the primary purpose of victimization;~~

~~(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing the offense for which the person is being sentenced under subsection (4)(a); or~~

~~(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; OR~~

~~(v) IS KNOWN BY THE VICTIM BUT DOES NOT MEET THE CRITERIA PROVIDED IN SUBSECTIONS (4)(c)(i) THROUGH (4)(c)(iv).~~"

Section 12. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required. (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, ~~or~~ 45-5-627, 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or IF THE DEFENDANT WAS CONVICTED UNDER 46-23-507 ~~if~~ AND the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the department of labor and industry.

The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) The court shall order a presentence report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a $50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under ~~53-1-203(4)~~ 53-1-203(5)."

Section 13. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1)(a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically

provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in ~~45-5-502(4),~~ 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4); or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of ~~sex~~ sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) of this section may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(p) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension

of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 14. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

(a) prohibition of the offender's holding public office;

(b) prohibition of the offender's owning or carrying a dangerous weapon;

(c) restrictions on the offender's freedom of association;

(d) restrictions on the offender's freedom of movement;

(e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;

(f) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

~~(3) An offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison shall enroll in and complete the educational phase of the prison's sexual offender program.~~"

Section 15. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, ~~or~~ any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to ~~45-5-502(4),~~ 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

(i) the terms and conditions of the suspended or deferred sentence; or

(ii) a condition of supervision after release from imprisonment imposed pursuant to ~~45-5-502(4),~~

45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 16. Section 46-18-205, MCA, is amended to read:

"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension. (1) If the victim was less than 16 years ~~old~~ of age, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of

46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-505, deviate sexual conduct; or

(d) 45-5-507, incest.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

(a) 45-5-103(4), mitigated deliberate homicide;

(b) 45-5-202, aggravated assault;

(c) 45-5-302(2), kidnapping;

(d) 45-5-303(2), aggravated kidnapping;

(e) 45-5-401(2), robbery;

(f) 45-5-502(3), sexual assault;

(g) 45-5-503(2) and (3), sexual intercourse without consent;

(h) 45-5-603, aggravated promotion of prostitution;

(i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;

(j) 45-9-102(4), criminal possession of dangerous drugs; and

(k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

(4) The provisions of this section do not apply to sentences imposed pursuant to ~~45-5-502(4),~~ 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4)."

SECTION 17. SECTION 46-18-222, MCA, IS AMENDED TO READ:

"46-18-222. Exceptions to mandatory minimum sentences ~~and~~, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, ~~and~~ the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the

offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4) and the judge determines, based on the findings contained in a sexual offender evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

Section 18. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-213, assault with a weapon;

(iv) 45-5-302(2), kidnapping;

(v) 45-5-303(2), aggravated kidnapping;

(vi) 45-5-401(2), robbery;

(vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault~~, AND 45-5-502(4), SEXUAL ASSAULT WHEN THE VICTIM IS 12 YEARS OF AGE OR YOUNGER AND THE OFFENDER IS 18 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE AND THE TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE OFFENDER IS A SEXUAL PREDATOR OF CHILDREN~~;

(viii) 45-5-503(2) ~~and (3)~~ through (4), sexual intercourse without consent~~; and~~;

(IX) 45-5-507(5), INCEST WHEN THE VICTIM IS 12 YEARS OF AGE OR YOUNGER AND THE OFFENDER IS 18 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE ~~AND THE TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE OFFENDER IS A SEXUAL PREDATOR OF CHILDREN~~;

(X) 45-5-601(3), 45-5-602(3), OR 45-5-603(2)(C), PROSTITUTION, PROMOTION OF PROSTITUTION, OR AGGRAVATED PROMOTION OF PROSTITUTION WHEN THE PROSTITUTE WAS 12 YEARS OF AGE OR YOUNGER AND THE PROSTITUTE'S CLIENT WAS 18 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE;

~~(X)~~(XI) 45-5-625(4), sexual abuse of children ~~by a sexual predator of children~~;

~~(ix)~~~~(xi)~~(XII) 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal possession with intent to distribute a dangerous drug;

~~(x)~~~~(xii)~~(XIII) 45-9-102(4), criminal possession of an opiate;

~~(xi)~~~~(xiii)~~(XIV) 45-9-103(2), criminal possession of an opiate with an intent to distribute; and

~~(xii)~~~~(xiv)~~(XV) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed $50,000."

Section 19. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

~~(3)~~(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(4)~~(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(5)~~(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

~~(6)~~(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502(3) (IF THE VICTIM IS LESS THAN 16 YEARS OF AGE AND THE OFFENDER IS 3 OR MORE YEARS OLDER THAN THE VICTIM), ~~45-5-502(4) (IF THE VICTIM IS 12 YEARS OF AGE OR YOUNGER~~

~~AND THE OFFENDER IS 18 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE AND THE TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE OFFENDER IS A SEXUAL PREDATOR OF CHILDREN)~~, 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim OR IF THE VICTIM IS 12 YEARS OF AGE OR YOUNGER AND THE OFFENDER IS 18 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE ~~AND THE TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE OFFENDER IS A SEXUAL PREDATOR OF CHILDREN~~), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) OR (2)(c), or 45-5-625; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection ~~(6)(a)~~ (9)(a) or for which the offender was required to register as a ~~sex~~ sexual offender after AN ADJUDICATION OR conviction.

~~(7)~~(10) "Sexual or violent offender" means a person who has been convicted of OR, IN YOUTH COURT, FOUND TO HAVE COMMITTED OR BEEN ADJUDICATED FOR a sexual or violent offense.

~~(8)~~(11) "Sexually violent predator" means a person who:

(a) has been convicted of OR, IN YOUTH COURT, FOUND TO HAVE COMMITTED OR BEEN ADJUDICATED FOR a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses~~.~~; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

~~(9)~~(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably equivalent to a violation listed in subsection ~~(9)(a)~~ (13)(a)."

Section 20. Section 46-23-504, MCA, is amended to read:

"46-23-504. Persons required to register -- procedure. (1) ~~A~~ Except as provided in 41-5-1513, a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced

to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within ~~10~~ 3 business days of entering a county of this state for the purpose of residing or setting up a temporary ~~domicile~~ residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection (1)(a), ~~or~~ (1)(c), or (1)(d) must be with the ~~chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever law enforcement official the offender registers with~~ appropriate registration agency. If an offender registers with a police department, the department shall notify the ~~other official~~ sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate ~~law enforcement~~ registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through (3)(g) and any other information required by the department of justice. The ~~chief of police or sheriff~~ registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days, the ~~chief of police or sheriff~~ registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The information collected from the offender at the time of registration must include the:

(a) name of the offender and any aliases used by the offender;

(b) offender's social security number;

(c) residence information required by subsection (4);

(d) name and address of any business or other place where the offender is or will be an employee;

(e) name and address of any school where the offender will be a student;

(f) offender's driver's license number; and

(g) description and license number of any motor vehicle owned or operated by the offender.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the

registration agency may require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through (3)(g). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

~~(4)~~(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509; ~~and~~

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

~~(ii)~~(iii) each year to a violent offender or an offender designated as a level 1 ~~or level 2~~ offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

~~(b)~~(c) The form must require the offender's ~~current address and~~ notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the ~~department~~ registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

~~(5)~~(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

~~(6)~~(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent

offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 21. Section 46-23-505, MCA, is amended to read:

"46-23-505. Notice of change of ~~address~~ name or residence or student, employment, or transient status -- duty to inform -- forwarding of information. (1) If an offender required to register under this part has a change of ~~address~~ name or residence or a change in student, employment, or transient status, the offender shall within ~~10~~ 3 business days of the change ~~give written~~ appear in person and give notification of the ~~new address~~ change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the ~~department and to the chief of police of the municipality or sheriff of the county~~ registration agency for the county or municipality from which the offender is moving. ~~The agency or department shall, within 3 days after receipt of the new address, forward it to the department of justice, which shall forward a copy of the new address and photograph to the sheriff having jurisdiction over the new address and to the chief of police of the municipality of the new address if the new address is in a municipality.~~

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality."

Section 22. Section 46-23-506, MCA, is amended to read:

"46-23-506. Duration of registration. (1) A sexual offender required to register under this part shall register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time during which the offender is in prison.

(2) A violent offender required to register under this part shall register:

(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing, but the offender is not relieved of the duty to register until a petition is granted under subsection (3)(a); or

(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as provided in subsection (3)(b).

(3) (a) An offender required to register for 10 years under subsection (2)(a) may, after the 10 years have passed, petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. The petition must be granted if the defendant has not been convicted under subsection (2)(b).

(b) Except as provided in subsection (5), at any time after 10 years of registration for a level 1 sexual offender and at any time after 25 years of registration for a level 2 sexual offender, an offender ~~required to register for life~~ may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(i) the offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under subsection (3)(b) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

(5) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 23. Section 46-23-508, MCA, is amended to read:

"46-23-508. Dissemination of information. (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) ~~a law enforcement~~ the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall, and the registration agency may, disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

~~(i)~~(ii) if an offender was given a level 1 designation under 46-23-509, ~~the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;~~ the department of justice shall, and the registration agency may, disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; and

(D) the offenses for which the offender is required to register under this part;

~~(ii)~~(iii) if an offender was given a level 1 designation and committed an offense against a minor or was

given a level 2 designation under 46-23-509, the department of justice shall, and the registration agency ~~with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of~~ may, disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any vehicle owned or operated by the offender;

~~(D)~~(F) the offenses for which the offender is required to register under this part; and

~~(E)~~(G) any conditions imposed by the court upon the offender for the safety of the public; and

~~(iii)~~(iv) if an offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection ~~(1)(b)(ii)~~ (1)(b)(iii). The ~~agency shall~~ notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and ~~shall~~ must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a ~~law enforcement~~ registration agency may, in its sole discretion, request an in camera review by a district court of the determination by the ~~law enforcement~~ registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a ~~law enforcement~~ registration agency without the permission of the victim.

(3) ~~A state or local law enforcement agency may use the internet to disseminate the information allowed by this section to the public.~~ Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration

agencies in implementing the dissemination provisions of this section."

Section 24. Section 46-23-509, MCA, is amended to read:

"46-23-509. Sexual offender evaluations and designations -- rulemaking authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (6) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(6) If an offense is covered by 46-23-502~~(6)(b)~~(9)(b), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government.

(7) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section."

Section 25. Section 46-23-1011, MCA, is amended to read:

"46-23-1011. Supervision on probation. (1) The department shall supervise probationers during their probation period, including supervision after release from imprisonment imposed pursuant to ~~45-5-502(4),~~ 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court ~~must~~ shall hold a hearing pursuant to the provisions of 46-18-203.

(e) ~~The~~ Except as they apply to supervision after release from imprisonment imposed pursuant to ~~45-5-502(4),~~ 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), the provisions

of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(5) (a) Upon recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection (5)(a) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the sentencing judge that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 26. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for the siting, establishment, and expansion of prerelease centers, rules for the establishment and maintenance of residential methamphetamine treatment programs, ~~rules for the establishment and maintenance of a residential sexual offender treatment program,~~ and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must

be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

~~(iii) a residential sexual offender treatment program.~~

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of intervention and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of intervention and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention and who are committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) THE DEPARTMENT MAY CONTRACT WITH PRIVATE, NONPROFIT OR FOR-PROFIT MONTANA CORPORATIONS TO ESTABLISH AND MAINTAIN A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM. IF THE DEPARTMENT INTENDS TO CONTRACT FOR THAT PURPOSE, THE DEPARTMENT SHALL ADOPT RULES FOR THE ESTABLISHMENT AND MAINTENANCE OF THAT PROGRAM.

~~(2)~~(3) The department and a private, nonprofit OR FOR-PROFIT Montana corporation may not enter into a contract under subsection (1)(c) OR (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) OR (2). Prior to entering into a contract for a period of 10 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

~~(3)~~(4) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth correctional facilities.

~~(4)~~(5) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of

compliance with any conditions of probation, such as drug testing."

~~NEW SECTION.~~ **~~Section 24. Sexual offender treatment.~~** ~~(1) Upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.~~

~~(2) The court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:~~

~~(a) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program; and~~

~~(b) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509 or is a sexually violent predator as defined in 46-23-502, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program.~~

~~(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.~~

~~(4) (a) Except for an offender sentenced pursuant to 45-5-502(4), 45-5-503(4), 45-5-507(5), or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.~~

~~(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.~~

~~(5) If a person's sentence is suspended pursuant to subsection (4)(b), during the suspended portion of the sentence the person:~~

~~(a) shall abide by the standard conditions of probation established by the department of corrections;~~

~~(b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is financially able to pay those costs;~~

~~(c) may have no contact with the victim or the victim's immediate family unless approved by the victim or the victim's parent or guardian, the person's therapists, and the person's probation officer;~~

~~(d) shall comply with all requirements and conditions of sexual offender treatment as directed by the~~

~~person's sex offender therapist;~~

~~(e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;~~

~~(f) may not consume alcoholic beverages;~~

~~(g) shall enter and remain in an aftercare program as directed by the person's probation officer;~~

~~(h) shall submit to random or routine drug and alcohol testing;~~

~~(i) may not possess pornographic material or access pornography through the internet; and~~

~~(j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or continuous satellite monitoring.~~

~~(6) The sentencing of a sexual offender is subject to 46-18-219.~~

~~(7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a sexual offender to impose any part of a sentence that was previously suspended.~~

~~NEW SECTION. **Section 25. Codification instruction.** [Section 20 24] is intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to [section 20 24].~~

NEW SECTION. **SECTION 27. SEXUAL OFFENDER TREATMENT.** (1) UPON SENTENCING A PERSON CONVICTED OF A SEXUAL OFFENSE, AS DEFINED IN 46-23-502, THE COURT SHALL DESIGNATE THE OFFENDER AS A LEVEL 1, 2, OR 3 OFFENDER PURSUANT TO 46-23-509.

(2) (A) EXCEPT AS PROVIDED IN SUBSECTION (2)(B), THE COURT SHALL ORDER AN OFFENDER CONVICTED OF A SEXUAL OFFENSE, AS DEFINED IN 46-23-502, EXCEPT AN OFFENSE UNDER 45-5-301 THROUGH 45-5-303, AND SENTENCED TO IMPRISONMENT IN A STATE PRISON TO:

(I) ENROLL IN AND SUCCESSFULLY COMPLETE THE EDUCATIONAL PHASE OF THE PRISON'S SEXUAL OFFENDER TREATMENT PROGRAM;

(II) IF THE PERSON HAS BEEN OR WILL BE DESIGNATED AS A LEVEL 3 OFFENDER PURSUANT TO 46-23-509, ENROLL IN AND SUCCESSFULLY COMPLETE THE COGNITIVE AND BEHAVIORAL PHASE OF THE PRISON'S SEXUAL OFFENDER TREATMENT PROGRAM; AND

(III) IF THE PERSON IS SENTENCED PURSUANT TO 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(C), OR 45-5-625(4) AND IS RELEASED ON PAROLE, REMAIN IN AN OUTPATIENT SEX OFFENDER TREATMENT PROGRAM FOR THE REMAINDER OF THE PERSON'S LIFE.

(B) A PERSON WHO HAS BEEN SENTENCED TO LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE MAY NOT PARTICIPATE IN TREATMENT PROVIDED PURSUANT TO THIS SECTION.

(3) A PERSON WHO HAS BEEN ORDERED TO ENROLL IN AND SUCCESSFULLY COMPLETE A PHASE OF A STATE PRISON'S SEXUAL OFFENDER TREATMENT PROGRAM IS NOT ELIGIBLE FOR PAROLE UNLESS THAT PHASE OF THE PROGRAM HAS BEEN SUCCESSFULLY COMPLETED AS CERTIFIED BY A SEXUAL OFFENDER EVALUATOR TO THE BOARD OF PARDONS AND PAROLE.

(4) (A) EXCEPT FOR AN OFFENDER SENTENCED PURSUANT TO 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(C), OR 45-5-625(4), DURING AN OFFENDER'S TERM OF COMMITMENT TO THE DEPARTMENT OF CORRECTIONS OR A STATE PRISON, THE DEPARTMENT MAY PLACE THE PERSON IN A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM APPROVED BY THE DEPARTMENT UNDER 53-1-203.

(B) IF THE PERSON SUCCESSFULLY COMPLETES A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF CORRECTIONS, THE REMAINDER OF THE TERM MUST BE SERVED ON PROBATION UNLESS THE DEPARTMENT PETITIONS THE SENTENCING COURT TO AMEND THE ORIGINAL SENTENCING JUDGMENT.

(5) IF A PERSON'S SENTENCE IS SUSPENDED PURSUANT TO SUBSECTION (4)(B), DURING THE SUSPENDED PORTION OF THE SENTENCE THE PERSON:

(A) SHALL ABIDE BY THE STANDARD CONDITIONS OF PROBATION ESTABLISHED BY THE DEPARTMENT OF CORRECTIONS;

(B) SHALL PAY THE COSTS OF IMPRISONMENT, PROBATION, AND ANY SEXUAL OFFENDER TREATMENT IF THE PERSON IS FINANCIALLY ABLE TO PAY THOSE COSTS;

(C) MAY HAVE NO CONTACT WITH THE VICTIM OR THE VICTIM'S IMMEDIATE FAMILY UNLESS APPROVED BY THE VICTIM OR THE VICTIM'S PARENT OR GUARDIAN, THE PERSON'S THERAPISTS, AND THE PERSON'S PROBATION OFFICER;

(D) SHALL COMPLY WITH ALL REQUIREMENTS AND CONDITIONS OF SEXUAL OFFENDER TREATMENT AS DIRECTED BY THE PERSON'S SEX OFFENDER THERAPIST;

(E) MAY NOT ENTER AN ESTABLISHMENT WHERE ALCOHOLIC BEVERAGES ARE SOLD FOR CONSUMPTION ON THE PREMISES OR WHERE GAMBLING TAKES PLACE;

(F) MAY NOT CONSUME ALCOHOLIC BEVERAGES;

(G) SHALL ENTER AND REMAIN IN AN AFTERCARE PROGRAM AS DIRECTED BY THE PERSON'S PROBATION OFFICER;

(H) SHALL SUBMIT TO RANDOM OR ROUTINE DRUG AND ALCOHOL TESTING;

(I) MAY NOT POSSESS PORNOGRAPHIC MATERIAL OR ACCESS PORNOGRAPHY THROUGH THE INTERNET; AND

(J) AT THE DISCRETION OF THE PROBATION AND PAROLE OFFICER, MAY BE SUBJECT TO ELECTRONIC MONITORING

OR CONTINUOUS SATELLITE MONITORING.

(6) THE SENTENCING OF A SEXUAL OFFENDER IS SUBJECT TO 46-18-202(2) AND 46-18-219.

(7) THE SENTENCING COURT MAY, UPON PETITION BY THE DEPARTMENT OF CORRECTIONS, MODIFY A SENTENCE OF A SEXUAL OFFENDER TO IMPOSE ANY PART OF A SENTENCE THAT WAS PREVIOUSLY SUSPENDED.

NEW SECTION. **SECTION 28. CODIFICATION INSTRUCTION.** [SECTION 27] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 46, CHAPTER 18, AND THE PROVISIONS OF TITLE 46, CHAPTER 18, APPLY TO [SECTION 27].

NEW SECTION. **Section 29. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 30. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 31. Retroactive applicability.** [Sections 2, 3, and ~~12~~ ~~16~~ 19 through ~~17~~ ~~21~~ 24] apply retroactively, within the meaning of 1-2-109, to:

(1) sexual offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after July 1, 1989; and

(2) violent offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after October 1, 1995.

- END -

AN ACT STRENGTHENING THE REGISTRATION REQUIREMENTS AND OTHER PROVISIONS APPLICABLE TO SEXUAL OFFENDERS; AMENDING PROVISIONS GOVERNING YOUTH COURT, CRIMINAL PROSECUTION AND PENALTIES, DEFINITIONS, PROBATION AND PAROLE, REGISTRATION OF TRANSIENTS, AND DISSEMINATION OF INFORMATION ABOUT SEXUAL OFFENDERS; ALLOWING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM; AMENDING SECTIONS 41-5-206, 41-5-216, 41-5-1513, 45-1-205, 45-5-503, 45-5-507, 45-5-512, 45-5-601, 45-5-602, 45-5-603, 45-5-625, 46-18-111, 46-18-201, 46-18-202, 46-18-203, 46-18-205, 46-18-222, 46-18-231, 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, 46-23-509, 46-23-1011, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and

the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) sexual assault as provided in 45-5-502(3);

~~(iv)~~(v) assault with a weapon as defined in 45-5-213;

~~(v)~~(vi) robbery as defined in 45-5-401;

~~(vi)~~(vii) burglary or aggravated burglary as defined in 45-6-204;

~~(vii)~~(viii) aggravated kidnapping as defined in 45-5-303;

~~(viii)~~(ix) possession of explosives as defined in 45-8-335;

~~(ix)~~(x) criminal distribution of dangerous drugs as defined in 45-9-101;

~~(x)~~(xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);

~~(xi)~~(xii) criminal possession with intent to distribute as defined in 45-9-103(1);

~~(xii)~~(xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

~~(xiii)~~(xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership~~,~~ as defined in 45-8-403;

~~(xiv)~~(xv) escape as defined in 45-7-306;

~~(xv)~~(xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through ~~(1)(b)(xiv)~~ (1)(b)(xv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

(a) a youth court proceeding and disposition will serve the interests of community protection;

(b) the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

Section 2. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of youth court, law enforcement, and department records. (1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the

youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, ~~or~~ reports referred to in 45-5-624(7), or the information referred to in 46-23-508, in any instance in which the youth was required to register, pursuant to Title 46, chapter 23, part 5, as a sexual offender.

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may ~~only~~ be inspected only pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was ~~only~~ involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(9) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section."

Section 3. Section 41-5-1513, MCA, is amended to read:

"41-5-1513. Disposition -- delinquent youth -- restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) subject to the provisions of subsection (5), require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a ~~sexual offense or~~ violent offense, as defined in 46-23-502, if committed by an adult, to register and remain registered as a ~~sexual or~~ violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection to ensure registration compliance.

(d) in the case of a delinquent youth who has been adjudicated for a sexual offense, as defined in 46-23-502, and is required to register as a sexual offender pursuant to Title 46, chapter 23, part 5, exempt the youth from the duty to register if the court finds that:

(i) the youth has not previously been found to have committed or been adjudicated for a sexual offense, as defined in 46-23-502; and

(ii) registration is not necessary for protection of the public and that relief from registration is in the public's best interest;

~~(d)~~(e) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may

order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

~~(e)~~(f) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a ~~sex~~ sexual offense, as defined in 46-23-502, the youth court ~~may~~ shall:

(a) prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-18-111;

(b) designate the youth's risk level pursuant to 46-23-509; and

(c) require completion of ~~sex~~ sexual offender treatment ~~before a youth is discharged~~.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel.

(5) The duration of registration for a youth who is required to register as a sexual or violent offender shall be as provided in 46-23-506, except that the court may, based on specific findings of fact, order a lesser duration of registration."

Section 4. Section 45-1-205, MCA, is amended to read:

"45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) or (5) may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the

offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(c) A prosecution under 45-5-504, 45-5-505, 45-5-507(1), (2), (3), or ~~(5)~~ (6), 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the

day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

Section 5. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219, ~~and~~ 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is ~~3~~ 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the

laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed $50,000, or both.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

~~(4)~~(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

~~(5)~~(6) As used in ~~subsection~~ subsections (3) and (4), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

Section 6. Section 45-5-507, MCA, is amended to read:

"45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) ~~A~~ Except as provided in subsections (4) and (5), a person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed $50,000.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000.

(5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (5)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

~~(5)~~(6) In addition to any sentence imposed under subsection (3), (4), or ~~(4)~~ (5), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Section 7. Section 45-5-512, MCA, is amended to read:

"45-5-512. Chemical treatment of sex offenders. (1) A person convicted of a first offense under 45-5-502(3), 45-5-503(3), or 45-5-507(4) or (5) may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4) of this section.

(2) A person convicted of a second or subsequent offense under 45-5-502(3), 45-5-503, or 45-5-507 may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4) of this section.

(3) A person convicted of a first or subsequent offense under 45-5-502, 45-5-503, or 45-5-507 who is not sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, may voluntarily undergo such treatment, which must be administered by the department of corrections or its agent and paid for by the department of corrections.

(4) Treatment under subsection (1) or (2) must begin 1 week before release from confinement and must continue until the department of corrections determines that the treatment is no longer necessary. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years.

(5) Prior to chemical treatment under this section, the person must be fully medically informed of its effects.

(6) A state employee who is a professional medical person may not be compelled against the

employee's wishes to administer chemical treatment under this section."

Section 8. Section 45-5-601, MCA, is amended to read:

"45-5-601. Prostitution. (1) A person commits the offense of prostitution if the person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether ~~such~~ the compensation is received or to be received or paid or to be paid.

(2) (a) A prostitute convicted of prostitution shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) ~~A~~ Except as provided in subsection (3), a prostitute's client who is convicted of prostitution shall for the first offense be fined an amount not to exceed $1,000 or be imprisoned for a term not to exceed 1 year, or both, and for a second or subsequent offense shall be fined an amount not to exceed $10,000 or be imprisoned for a term not to exceed 5 years, or both.

(3) (a) If the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

Section 9. Section 45-5-602, MCA, is amended to read:

"45-5-602. Promoting prostitution. (1) A person commits the offense of promoting prostitution if the person purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with

others, a house of prostitution or a prostitution business;

(b) procures an individual for a house of prostitution or a place in a house of prostitution for an individual;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(d) solicits clients for another person who is a prostitute;

(e) procures a prostitute for a patron;

(f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of an individual engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) ~~A~~ Except as provided in subsection (3), a person convicted of promoting prostitution shall be fined an amount not to exceed $50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(3) (a) If the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

Section 10. Section 45-5-603, MCA, is amended to read:

"45-5-603. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if the person purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child under the age of 18 years, whether or not the person is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support the person is responsible.

(2) (a) Except as provided in ~~subsection~~ subsections (2)(b) and (2)(c), a person convicted of aggravated promotion of prostitution shall be punished by:

(i) life imprisonment; or

(ii) imprisonment in a state prison for a term not to exceed 20 years or a fine in an amount not to exceed $50,000, or both.

(b) Except as provided in 46-18-219 and 46-18-222, a person convicted of aggravated promotion of prostitution of a child, who at the time of the offense is under 18 years of age, shall be punished by:

(i) life imprisonment; or

(ii) imprisonment in a state prison for a term of not less than 4 years or more than 100 years or a fine in an amount not to exceed $100,000, or both.

(c) (i) If the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense, the offender:

(A) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (2)(c)(i)(A) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(B) may be fined an amount not to exceed $50,000; and

(C) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(ii) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall

participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

Section 11. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication as defined in 45-8-213, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated.

(2) (a) ~~A~~ Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than $10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be

imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a ~~sex~~ sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

Section 12. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required. (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, ~~or~~ 45-5-627, 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or if the defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex

offender treatment association or has comparable credentials acceptable to the department of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) The court shall order a presentence report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a $50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under ~~53-1-203(4)~~ 53-1-203(5)."

Section 13. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4); or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of ~~sex~~ sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the

sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) of this section may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(p) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of

the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 14. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

(a) prohibition of the offender's holding public office;

(b) prohibition of the offender's owning or carrying a dangerous weapon;

(c) restrictions on the offender's freedom of association;

(d) restrictions on the offender's freedom of movement;

(e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;

(f) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

~~(3) An offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison shall enroll in and complete the educational phase of the prison's sexual offender program.~~"

Section 15. Section 46-18-203, MCA, is amended to read:

"**46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, ~~or~~ any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given

notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

(i) the terms and conditions of the suspended or deferred sentence; or

(ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 16. Section 46-18-205, MCA, is amended to read:

"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension. (1) If the victim was less than 16 years ~~old~~ of age, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-505, deviate sexual conduct; or

(d) 45-5-507, incest.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

(a) 45-5-103(4), mitigated deliberate homicide;

(b) 45-5-202, aggravated assault;

(c) 45-5-302(2), kidnapping;

(d) 45-5-303(2), aggravated kidnapping;

(e) 45-5-401(2), robbery;

(f) 45-5-502(3), sexual assault;

(g) 45-5-503(2) and (3), sexual intercourse without consent;

(h) 45-5-603, aggravated promotion of prostitution;

(i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;

(j) 45-9-102(4), criminal possession of dangerous drugs; and

(k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

(4) The provisions of this section do not apply to sentences imposed pursuant to 45-5-503(4),

45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4)."

Section 17. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences ~~and~~, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility. Mandatory minimum sentences prescribed by the laws of this state, mandatory life sentences prescribed by 46-18-219, ~~and~~ the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3), and restrictions on parole eligibility do not apply if:

(1) the offender was less than 18 years of age at the time of the commission of the offense for which the offender is to be sentenced;

(2) the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the offender, at the time of the commission of the offense for which the offender is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the offender was an accomplice, the conduct constituting the offense was principally the conduct of another, and the offender's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3), 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4) and the judge determines, based on the findings contained in a sexual offender evaluation report prepared by a qualified sexual offender evaluator pursuant to the provisions of 46-23-509, that treatment of the offender while incarcerated, while in a residential treatment facility, or while in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate protection of the victim and society, in which case the judge shall include in its judgment a statement of the reasons for its determination."

Section 18. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-213, assault with a weapon;

(iv) 45-5-302(2), kidnapping;

(v) 45-5-303(2), aggravated kidnapping;

(vi) 45-5-401(2), robbery;

(vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;

(viii) 45-5-503(2) ~~and (3)~~ through (4), sexual intercourse without consent;

(ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(x) 45-5-601(3), 45-5-602(3), or 45-5-603(2)(c), prostitution, promotion of prostitution, or aggravated promotion of prostitution when the prostitute was 12 years of age or younger and the prostitute's client was 18 years of age or older at the time of the offense;

(xi) 45-5-625(4), sexual abuse of children;

~~(ix)~~(xii) 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal possession with intent to distribute a dangerous drug;

~~(x)~~(xiii) 45-9-102(4), criminal possession of an opiate;

~~(xi)~~(xiv) 45-9-103(2), criminal possession of an opiate with an intent to distribute; and

~~(xii)~~(xv) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3).

(3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge not to exceed $50,000."

Section 19. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Municipality" means an entity that has incorporated as a city or town.

~~(3)~~(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

~~(4)~~(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(6) "Registration agency" means:

(a) if the offender resides in a municipality, the police department of that municipality; or

(b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which the offender resides.

(7) (a) "Residence" means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

~~(5)~~(8) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

~~(6)~~(9) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense), 45-5-601(3), 45-5-602(3), 45-5-603(1)(b) or (2)(c), or 45-5-625; or

(b) any violation of a law of another state, a tribal government, or the federal government that is reasonably equivalent to a violation listed in subsection ~~(6)(a)~~ (9)(a) or for which the offender was required to register as a ~~sex~~ sexual offender after an adjudication or conviction.

~~(7)~~(10) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

~~(8)~~(11) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses~~.~~; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(12) "Transient" means an offender who has no residence.

~~(9)~~(13) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

(b) any violation of a law of another state, a tribal government, or the federal government reasonably

equivalent to a violation listed in subsection ~~(9)(a)~~ (13)(a)."

Section 20. Section 46-23-504, MCA, is amended to read:

"46-23-504. Persons required to register -- procedure. (1) ~~A~~ Except as provided in 41-5-1513, a sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within ~~10~~ 3 business days of entering a county of this state for the purpose of residing or setting up a temporary ~~domicile~~ residence for 10 days or more or for an aggregate period exceeding 30 days in a calendar year; and

(d) who is a transient shall register within 3 business days of entering a county of this state.

(2) Registration under subsection (1)(a), ~~or~~ (1)(c), or (1)(d) must be with the ~~chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever law enforcement official the offender registers with~~ appropriate registration agency. If an offender registers with a police department, the department shall notify the ~~other official~~ sheriff's office of the county in which the municipality is located of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender's registration status with the appropriate ~~law enforcement~~ registration agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by subsections (3)(a) through (3)(g) and any other information required by the department of justice. The ~~chief of police or sheriff~~ registration agency shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days, the ~~chief of police or sheriff~~ registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice. The information collected from the offender at the time of registration must include the:

(a) name of the offender and any aliases used by the offender;

(b) offender's social security number;

(c) residence information required by subsection (4);

(d) name and address of any business or other place where the offender is or will be an employee;

(e) name and address of any school where the offender will be a student;

(f) offender's driver's license number; and

(g) description and license number of any motor vehicle owned or operated by the offender.

(4) (a) If, at the time of registration, the offender regularly resides in more than one county or municipality, the offender shall register with the registration agency of each county or municipality in which the offender resides. If an offender resides in more than one location within the same county or municipality, the registration agency may require the offender to provide all of the locations where the offender regularly resides and to designate one of them as the offender's primary residence.

(b) Registration of more than one residence pursuant to this section is an exception from the single residence rule provided in 1-1-215.

(5) A transient shall report monthly, in person, to the registration agency with which the transient registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency and during the normal business hours of that agency. On that day, the transient shall provide the registration agency with the information listed in subsections (3)(a) through (3)(g). The registration agency to which the transient reports may also require the transient to provide the locations where the transient stayed during the previous 30 days and may stay during the next 30 days.

~~(4)~~(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509; ~~and~~

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

~~(ii)~~(iii) each year to a violent offender or an offender designated as a level 1 ~~or level 2~~ offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

~~(b)~~(c) The form must require the offender's ~~current address and~~ notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the ~~department~~ registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the

registration verification form, the registration agency shall take a photograph of the offender.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

~~(5)~~(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

~~(6)~~(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 21. Section 46-23-505, MCA, is amended to read:

"46-23-505. Notice of change of ~~address~~ name or residence or student, employment, or transient status -- duty to inform -- forwarding of information. (1) If an offender required to register under this part has a change of ~~address~~ name or residence or a change in student, employment, or transient status, the offender shall within ~~10~~ 3 business days of the change ~~give written~~ appear in person and give notification of the ~~new address~~ change to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the ~~department and to the chief of police of the municipality or sheriff of the county~~ registration agency for the county or municipality from which the offender is moving. ~~The agency or department shall, within 3 days after receipt of the new address, forward it to the department of justice, which shall forward a copy of the new address and photograph to the sheriff having jurisdiction over the new address and to the chief of police of the municipality of the new address if the new address is in a municipality.~~

(2) If an offender required to register under this part is a transient, the offender shall provide written notification to the registration agency with which the offender last registered or, if the offender initially registered pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county or municipality in which the offender resides.

(3) Within 3 business days after receipt of the information concerning the new name or residence or a change in the student, employment, or transient status, the registration agency shall forward the information to the department of justice, which shall forward a copy of the information and photograph to:

(a) in the event of a change in residence, the registration agency for the county to which the offender

moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender moves;

(b) in the event of a change of name or of student, employment, or transient status, the registration agency of the appropriate county or municipality."

Section 22. Section 46-23-506, MCA, is amended to read:

"46-23-506. Duration of registration. (1) A sexual offender required to register under this part shall register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time during which the offender is in prison.

(2) A violent offender required to register under this part shall register:

(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing, but the offender is not relieved of the duty to register until a petition is granted under subsection (3)(a); or

(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as provided in subsection (3)(b).

(3) (a) An offender required to register for 10 years under subsection (2)(a) may, after the 10 years have passed, petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. The petition must be granted if the defendant has not been convicted under subsection (2)(b).

(b) Except as provided in subsection (5), at any time after 10 years of registration for a level 1 sexual offender and at any time after 25 years of registration for a level 2 sexual offender, an offender ~~required to register for life~~ may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(i) the offender has remained a law-abiding citizen; and

(ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under subsection (3)(b) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

(5) Subsection (3) does not apply to an offender who was convicted of:

(a) a violation of 45-5-503 if:

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 23. Section 46-23-508, MCA, is amended to read:

"46-23-508. Dissemination of information. (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name and address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) ~~a law enforcement~~ the department of justice or the registration agency shall release any offender registration information that it possesses relevant to the public if the department of justice or the registration agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information that it possesses may protect the public and, at a minimum:

(i) if the offender is also a violent offender, the department of justice shall, and the registration agency may, disseminate to the victim and the public:

(A) the offender's name; and

(B) the offenses for which the offender is required to register under this part;

~~(i)~~(ii) if an offender was given a level 1 designation under 46-23-509, ~~the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;~~ the department of justice shall, and the registration agency may, disseminate to the victim and the public:

(A) the offender's address;

(B) the name, photograph, and physical description of the offender;

(C) the offender's date of birth; and

(D) the offenses for which the offender is required to register under this part;

~~(ii)~~(iii) if an offender was given a level 1 designation and committed an offense against a minor or was given a level 2 designation under 46-23-509, the department of justice shall, and the registration agency ~~with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of~~ may, disseminate to the victim and the public:

(A) the offender's address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offender's date of birth;

(E) the license plate number and a description of any vehicle owned or operated by the offender;

~~(D)~~(F) the offenses for which the offender is required to register under this part; and

~~(E)~~(G) any conditions imposed by the court upon the offender for the safety of the public; and

~~(iii)~~(iv) if an offender was given a level 3 designation under 46-23-509, the department of justice and the registration agency shall give the victim and the public notification that includes the information contained in subsection ~~(1)(b)(ii)~~ (1)(b)(iii). The ~~agency shall~~ notification must also include the date of the offender's release from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and ~~shall~~ must include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a ~~law enforcement~~ registration agency may, in its sole discretion, request an in camera review by a district court of the determination by the ~~law enforcement~~ registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a ~~law enforcement~~ registration agency without the permission of the victim.

(3) ~~A state or local law enforcement agency may use the internet to disseminate the information allowed by this section to the public.~~ Dissemination to the public of information allowed or required by this section may be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In determining the method of dissemination, the disseminating entity should consider the level of risk posed by the offender to the public.

(4) The department of justice shall develop a model community notification policy to assist registration agencies in implementing the dissemination provisions of this section."

Section 24. Section 46-23-509, MCA, is amended to read:

"46-23-509. Sexual offender evaluations and designations -- rulemaking authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the

offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (6) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part and who was sentenced prior to October 1, 1997, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

(6) If an offense is covered by 46-23-502~~(6)(b)~~(9)(b), the offender registers under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or the federal government, the department of justice may give the offender the risk level designation assigned by the other state or the federal government.

(7) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the department in determining the risk level to be assigned to an offender pursuant to this section."

Section 25. Section 46-23-1011, MCA, is amended to read:

"46-23-1011. Supervision on probation. (1) The department shall supervise probationers during their probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel as provided in chapter 8 of this title.

(2) A copy of the conditions of probation must be signed by the probationer. The department may require a probationer to waive extradition for the probationer's return to Montana.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) (a) The probation and parole officer may recommend and a judge may modify or add any condition of probation or suspension of sentence at any time.

(b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with a report that identifies the conditions of probation and the reason why the officer believes that the judge should modify or add the conditions.

(c) The county attorney may file a petition requesting that the court modify or add conditions as requested by the probation and parole officer.

(d) The court may grant the petition if the probationer does not object. If the probationer objects to the petition, the court ~~must~~ shall hold a hearing pursuant to the provisions of 46-18-203.

(e) ~~The~~ Except as they apply to supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

(f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive or modify a condition of restitution only as provided in 46-18-246.

(5) (a) Upon recommendation of the probation and parole officer, a judge may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

(i) the judge determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; and

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection (5)(a) does not prohibit a judge from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the sentencing judge that the workload of a district probation and parole

office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place an offender on probation under supervision by that district office unless the judge grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the judge for conditional discharge. The judge may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 26. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for the siting, establishment, and expansion of prerelease centers, rules for the establishment and maintenance of residential methamphetamine treatment programs, and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to

46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of intervention and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of intervention and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention and who are committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department may contract with private, nonprofit or for-profit Montana corporations to establish

and maintain a residential sexual offender treatment program. If the department intends to contract for that purpose, the department shall adopt rules for the establishment and maintenance of that program.

~~(2)~~(3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a contract for a period of 10 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

~~(3)~~(4) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth correctional facilities.

~~(4)~~(5) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing."

Section 27. Sexual offender treatment. (1) Upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.

(2) (a) Except as provided in subsection (2)(b), the court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:

(i) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program;

(ii) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program;

and

(iii) if the person is sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4) and is released on parole, remain in an outpatient sex offender treatment program for the remainder of the person's life.

(b) A person who has been sentenced to life imprisonment without possibility of release may not participate in treatment provided pursuant to this section.

(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

(4) (a) Except for an offender sentenced pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.

(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.

(5) If a person's sentence is suspended pursuant to subsection (4)(b), during the suspended portion of the sentence the person:

(a) shall abide by the standard conditions of probation established by the department of corrections;

(b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is financially able to pay those costs;

(c) may have no contact with the victim or the victim's immediate family unless approved by the victim or the victim's parent or guardian, the person's therapists, and the person's probation officer;

(d) shall comply with all requirements and conditions of sexual offender treatment as directed by the person's sex offender therapist;

(e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(f) may not consume alcoholic beverages;

(g) shall enter and remain in an aftercare program as directed by the person's probation officer;

(h) shall submit to random or routine drug and alcohol testing;

(i) may not possess pornographic material or access pornography through the internet; and

(j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or continuous satellite monitoring.

(6) The sentencing of a sexual offender is subject to 46-18-202(2) and 46-18-219.

(7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a sexual offender to impose any part of a sentence that was previously suspended.

Section 28. Codification instruction. [Section 27] is intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to [section 27].

Section 29. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 30. Effective date. [This act] is effective on passage and approval.

Section 31. Retroactive applicability. [Sections 2, 3, and 19 through 24] apply retroactively, within the meaning of 1-2-109, to:

(1) sexual offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after July 1, 1989; and

(2) violent offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after October 1, 1995.

- END -

MINUTES

MONTANA SENATE
60th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JESSE LASLOVICH**, on February 22, 2007 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Jesse Laslovich, Chairman (D)
Sen. Aubyn Curtiss (R)
Sen. Larry Jent (D)
Sen. Carol C. Juneau (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)
Sen. David E. Wanzenried (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: Carol Andersen, Committee Secretary
Valencia Lane, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 545, 2/20/2007; SB 546, 2/20/2007; SB 523, 2/20/2007; SB 547, 2/20/2007; SJ 24, 2/20/2007
Executive Action:	SJ 24,SB 523, SB 385, SB 294, SB 435, SB 471, SB 377

HEARING ON SB 545

Opening Statement by Sponsor:

00:01:48 SEN. FRANK SMITH (D), SD 16, opened the hearing on **SB 545,** Revise definition of regional correctional facilities.

Proponents:

00:03:07 Sen. Gerald Pease

00:03:30 James Klessons, Hardin 2-Rivers Authority

00:11:59 Tom McKerlick, Contractor, City of Hardin

00:14:34 Rep. Norma Bixby

EXHIBIT(jus40a01)

00:19:12 Rep. Veronica Small-Eastman

Opponents:

00:23:12 JC Weingartner, Montana Education Association-Montana Federation of Teachers (MEA-MFT)

00:25:41 Scott Crichton, Executive Director, American Civil Liberties Union, Montana

Informational Testimony:

00:30:31 Mike Ferriter, Director, Department of Corrections

Questions from Committee Members and Responses:

00:33:21 Sen. McGee to Director Ferriter

00:38:17 Sen. McGee to Diana Koch, Department of Corrections

00:43:17 Sen. McGee to Director Ferriter

00:47:46 Sen. McGee to James Klessons

00:51:01 Sen. Shockley to Director Ferriter

00:53:06 Sen. Shockley to James Klessons

Closing by Sponsor:

00:58:58 Sen. Smith

HEARING ON SB 546

Opening Statement by Sponsor:

01:01:57 SEN. JOHN ESP (R), SD 31, opened the hearing on **SB 546,** Drug treatment for pregnant woman in child protective cases.

EXHIBIT(jus40a02)

Proponents:

01:06:20 Anna Whiting-Sorrell, Policy Advisor, Montana Governor's Office

01:08:48 Don Hargrove, Montana Board of Pardons and Parole

01:10:02 Tom Shellenberg

EXHIBIT(jus40a03)

01:15:00 Shirley Brown, Child Health Services

01:18:40 Joyce DeCunzo, Administrator, Addictive and Mental Disorder Services

01:21:48 Barbara Burton, Florence Crittenton Home Services

01:23:02 Jani McCall, Montana Children's Initiative Provider Association (MCI)

Opponents:

01:24:32 Scott Crichton, American Civil Liberties Union

01:30:49 Beth Brenneman, Montana Advocacy Program

Informational Testimony: None.

Questions from Committee Members and Responses:

01:37:59 Sen. Juneau to Sen. Esp.

01:38:57 Sen. O'Neil to Sen. Esp

01:39:21 Sen. Perry to Sen. Esp

01:41:33 Sen. Moss to Sen. Esp

01:42:46 Sen. Moss to Shirley Brown

01:44:49 Sen. Moss to Sen. Esp

01:45:33 Sen. O'Neil to Shirley Brown

01:47:41 Sen. Perry to Shirley Brown

01:48:52 Sen. Perry to Sen. Esp

01:49:49 Sen. Perry to Dave Peshek, Administrator, Montana Chemical Dependency Center

01:52:48 Sen. Perry to Sen. Esp

Closing by Sponsor:

01:54:36 Sen. Esp

EXHIBIT(jus40a04)

01:56:47 Chair relinquished to Sen. McGee

HEARING ON SB 523

Opening Statement by Sponsor:

01:57:53 **SEN. JESSE LASLOVICH (D), SD 43**, opened the hearing on **SB 523**, Revise court of record.

Proponents:

02:00:56 Andrea Olsen, Montana Trial Lawyers

Opponents: None.

Informational Testimony:

02:02:37 James Shea, Judge, Workers Compensation Court

Questions from Committee Members and Responses:

02:04:49 Sen. O'Neil to Sen. Laslovich

02:06:57 Sen. O'Neil to Judge Shea

Closing by Sponsor:

02:11:38 Sen. Laslovich

02:12:48 Chair Resumed

HEARING ON SB 547

Opening Statement by Sponsor:

02:13:38 SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 547**, Revise laws on sentencing, registration, and treatment of sexual offenders.

Proponents:

02:26:03 Ali Bovingdon, Attorney General's Office

02:27:54 Pam Bunke, Department of Corrections

02:30:08 Linda Gryczan, Montana Women's Bill Lobbyist

02:31:17 Mike Mahoney, Warden, Montana State Prison

Opponents:

02:33:29 JC Weingartner, Montana Education Association-Montana Federation of Teachers (MEA-MFT)

Informational Testimony: None.

Questions from Committee Members and Responses:

02:41:46 Sen. Laslovich to Mike Ferriter, Director, Department of Corrections

Closing by Sponsor:

02:47:24 Sen. Perry

02:48:15 Chair Relinquished to Sen. McGee

HEARING ON SJ 24

Opening Statement by Sponsor:

02:48:26 **SEN. JESSE LASLOVICH (D), SD 43,** opened the hearing on **SJ 24,** Study prison population growth and alternative sentencing.

Proponents:

02:51:06 Sen. Steve Gallus

02:54:11 Mike Ferriter, Director, Department of Corrections

02:55:08 Scott Crichton, American Civil Liberties Union

Opponents: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

02:57:30 Sen. Juneau to Sen. Gallus

02:59:44 Sen. Shockley to Sen. Gallus

03:00:08 Sen. O'Neil to Sen. Gallus

Closing by Sponsor:

03:05:03 Sen. Laslovich

03:06:30 Break

03:15:03 Resume

EXECUTIVE ACTION ON SJ 24

03:15:04 Sen. Laslovich

03:15:47 **Motion**: **SEN. SHOCKLEY moved that SJ 24 DO PASS.**

Discussion:

03:17:03 **Motion/Vote: SEN. LASLOVICH moved that CONCEPTUAL AMENDMENT BE ADOPTED. Motion carried unanimously by voice vote. SEN. PEASE, SEN. WILLIAMS, SEN. JUNEAU voted aye by proxy.**

03:18:11 **Motion: SEN. SHOCKLEY moved that SJ 24 DO PASS AS AMENDED.**

Discussion:

03:19:21 Sen. O'Neil

03:19:32 Sen. McGee

03:20:00 Sen. Laslovich

03:20:19 Sen. O'Neil

03:20:28 **Motion/Vote: Motion carried unanimously by voice vote. SEN. JUNEAU voted aye by proxy.**

EXECUTIVE ACTION ON SB 523

03:20:57 **Motion: SEN. MCGEE moved that SB 523 DO PASS.**

Discussion:

03:21:05 **Vote: Motion carried unanimously by voice vote. SEN. JUNEAU voted aye by proxy.**

EXECUTIVE ACTION ON SB 385

03:21:58 **Sen. Laslovich**

03:22:10 **Motion/Vote: SEN. LASLOVICH moved to RECONSIDER THE MOTION on SB 385. Motion carried 9-3 by voice vote with SEN. JENT, SEN. O'NEIL, and SEN. SHOCKLEY voting no.**

03:22:40 **Motion: SEN. PERRY moved that SB 385 DO PASS AS AMENDED.**

Discussion:

03:22:56 Sen. McGee

03:23:34 Cynthia Wolken, Attorney, Montana Legal Services Association

03:25:36 Valencia Lane, LSD

03:25:57 Sen. Jent

03:26:28 Sen. Shockley

03:27:24 Sen. Laslovich

03:27:30 Sen. Perry

03:28:02 Valencia Lane

03:28:37 Sen. Laslovich

03:28:43 Sen. Perry

03:28:50 Sen. Shockley

03:29:00 Valencia Lane

03:29:41 Sen. McGee

03:30:11 **Sen. Perry withdrew motion.**

Motion: **SEN. PERRY moved that AMENDMENT BE ADOPTED.**

Discussion:

03:32:10 **Motion/Vote**: **Motion carried 11-1 by voice vote with SEN. JUNEAU voting no.**

03:32:36 **Motion**: **SEN. PERRY moved that SB 385 DO PASS AS AMENDED.**

Discussion:

03:32:57 Sen. McGee

03:33:20 **Sen. McGee moved conceptual Amendment.**

03:33:31 **Motion/Vote**: **SEN. MCGEE moved that SB 385 BE AMENDED. Motion carried unanimously by voice vote.**

03:33:47 **Motion**: **SEN. MCGEE moved that SB 385 DO PASS AS AMENDED.**

Discussion:

03:34:03 Sen. Jent

03:34:23 Sen. O'Neil

03:35:15 **Motion/Vote: SEN. MOSS CALLED THE QUESTION ON SB 385. Motion carried 9-3 by voice vote with SEN. JENT, SEN. O'NEIL, and SEN. SHOCKLEY voting no.**

EXECUTIVE ACTION ON SB 294

03:35:56 Sen. Laslovich

03:36:20 **Motion: SEN. LASLOVICH moved that SB 294 DO PASS.**

Discussion:

03:36:28 Valencia Lane, LSD

EXHIBIT(jus40a05)

03:37:19 **Motion: SEN. LASLOVICH moved that AMENDMENT SB029401.APM BE ADOPTED.**

Discussion:

03:39:05 Valencia Lane, LSD

03:39:42 Kelly Williams, Department of Public Health & Human Services (DPHHS)

03:41:10 **Vote: Motion carried unanimously by voice vote. SEN. JENT, SEN. WANZENRIED, SEN. JUNEAU AND SEN. WILLIAMS voted aye by proxy.**

03:41:51 **Motion/Vote: SEN. LASLOVICH moved that SB 294 DO PASS AS AMENDED. Motion carried 9-3 by voice vote with SEN. MCGEE, SEN JENT and SEN. SHOCKLEY voting no. SEN. JUNEAU and SEN. WILLIAMS voted aye by proxy.**

03:43:45 Break

04:13:26 Resumed

04:13:30 Sen. Laslovich

04:14:05 **Motion: SEN. MCGEE moved that SB 377, SB 435, SB 471 DO PASS.**

Discussion:

04:14:24 Sen. Laslovich

04:14:30 Sen. Jent

04:19:03 Sen. Moss

04:20:21 Sen. McGee

04:22:21 Sen. O'Neil

04:24:01 Sen. Curtiss

EXECUTIVE ACTION ON SB 435

04:25:47 **Motion/Vote: SEN. MCGEE moved that SB 435 BE TABLED. Motion carried 9-3 by voice vote with SEN. CURTISS, SEN. O'NEIL, and SEN. WANZENRIED voting no. SEN. WILLIAMS and SEN. JUNEAU voted aye by proxy.**

EXECUTIVE ACTION ON SB 471

04:26:11 **Motion/Vote: SEN. MCGEE moved that SB 471 BE TABLED. Motion carried 10-2 by voice vote with SEN. CURTISS and SEN. O'NEIL voting no. SEN. JUNEAU and SEN. WILLIAMS voted aye by proxy.**

EXECUTIVE ACTION ON SB 377

04:26:40 **Motion/Vote: SEN. MCGEE moved that SB 377 BE TABLED. Motion carried 7-5 by voice vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. SHOCKLEY, and SEN. WANZENRIED voting no. SEN. WILLIAMS and SEN. JUNEAU voted aye by proxy.**

ADJOURNMENT

Adjournment: 12:28 P.M.

_____
SEN. JESSE LASLOVICH, Chairman

_____
CAROL ANDERSEN, Secretary

JL/ca

Additional Exhibits:

EXHIBIT(jus40aad.pdf)

MONTANA SENATE
2007 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 2-22-07

NAMES	PRESENT	ABSENT	EXCUSED
SEN. LYNDA MOSS (D)	✓		
SEN. DAN McGEE (R)	✓		
SEN. CAROL WILLIAMS (D)			✓
SEN. CAROL JUNEAU (D)	✓		
SEN. GERALD PEASE (D)	✓		
SEN. JIM SHOCKLEY (R)	✓		
SEN. AUBYN CURTISS (R)	✓		
SEN. JERRY O'NEIL (R)	✓		
SEN. LARRY JENT (D)	✓		
SEN. GARY PERRY (R)	✓		
SEN. DAVID WANZENRIED (D)			✓
SEN. JESSE LASLOVICH (D) CHAIRMAN	✓		
VALENCIA LANE, LSD	✓		
CAROL ANDERSEN, COMMITTEE SECRETARY	✓		

SENATE STANDING COMMITTEE REPORT

February 22, 2007

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 385** (first reading copy -- white) **do pass as amended**.

Signed: _____
Senator Jesse Laslovich, Chair

And, that such amendments read:

1. Page 2, line 13.
Following: "not"
Strike: "less than 2 years or"

2. Page 2, line 17.
Following: "not"
Strike: "less than 2 years or"

3. Page 3, line 11.
Following: "not"
Strike: "less than 2 years or"

4. Page 3, line 15.
Following: "not"
Strike: "less than 2 years or"

- END -

Committee Vote:
Yes 9, No 3
Fiscal Note Required ___

SENATE STANDING COMMITTEE REPORT

February 22, 2007

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Joint Resolution 24** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Jesse Laslovich, Chair

And, that such amendments read:

1. Page 1, line 30 through page 2, line 1.
Following: "offenders" on line 30
Strike: remainder of line 30 through "possession" on page 2, line 1

- END -

Committee Vote:
Yes 12, No 0
Fiscal Note Required ___ NF

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 294** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Jesse Laslovich, Chair

And, that such amendments read:

1. Title, line 4 through line 5.
Following: "CLARIFYING" on line 4
Strike: remainder of line 4 through "CLARIFYING" on line 5

2. Title, line 6 through line 7.
Strike: "SECTIONS" on line 6
Insert: "SECTION"
Strike: the second "AND" on line 6 through "72-5-317" on line 7

3. Page 2, line 24.
Strike: line 24 in its entirety

4. Page 2, line 25.
Strike: "(b)"
Insert: "(6)"

5. Page 2, line 26.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsection

6. Page 2, line 29 through page 3, line 26.
Strike: section 2 in its entirety
Renumber: subsequent section

Committee Vote:
Yes 9, No 3
Fiscal Note Required ___ KA

- END -

SENATE STANDING COMMITTEE REPORT

February 22, 2007

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Joint Resolution 24** (first reading copy -- white) **do pass**.

Signed: _____
Senator Jesse Laslovich, Chair

- END -

Committee Vote:
Yes 12, No 0
Fiscal Note Required ___ KH

401300SC.ssc

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 523** (first reading copy -- white) **do pass**.

Signed: _____
Senator Jesse Laslovich, Chair

- END -

Committee Vote:
Yes 12, No 0
Fiscal Note Required ___

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 426** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Jesse Laslovich, Chair

And, that such amendments read:

1. Page 1, line 23.
Following: "(3)"
Insert: "(a)"

2. Page 1, line 24.
Strike: "(a)"
Insert: "(i)"

3. Page 1, line 26.
Strike: "(b)"
Insert: "(ii)"

4. Page 1, line 28.
Following: line 27
Insert: "(b) For purposes of this subsection (3), if reasonable costs and attorney fees would otherwise be payable under subsection (3)(a) and the claimant is not represented by an attorney, the claimant must be paid the claimant's reasonable costs and, in lieu of attorney fees, an amount equal to $50 per hour for the claimant's time spent on the matter."

5. Page 2, line 13.
Following: "~~only~~"
Insert: "only"

6. Page 2, line 21 and line 22.
Strike: "chapter 71 or 72 of this title"
Insert: "this chapter"

Committee Vote:
Yes 10, No 2
Fiscal Note Required __ KF

7. Page 2, line 27.
Following: line 26
Insert: "(c) For purposes of this subsection (4), if reasonable costs and attorney fees would otherwise be payable under subsection (4)(a) and the claimant is not represented by an attorney, the claimant must be paid the claimant's reasonable costs and, in lieu of attorney fees, an amount equal to $50 per hour for the claimant's time spent on the matter."

- END -

COMMITTEE FILE COPY

TABLED BILL

The **SENATE JUDICIARY COMMITTEE** TABLED **SB 377, SB 435, SB 471**, by motion, on **Thursday, February 22, 2007**.

Carol Andersen
(For the Committee)

(Secretary of the Senate)

1 - 22
(Time) (Date)

February 22, 2007 Carol R. Andersen, Secretary Phone: 444-4697

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (f) , a committee member may vote by proxy using a standard form.

PROXY VOTE

I, the undersigned, hereby authorize Senator _____

to vote my proxy on any issue before the Senate _____

_____ Committee

held on _____, 2007.

SJ 24 as amended
yes

_____
SENATOR
STATE OF MONTANA

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (f) , a committee member may vote by proxy using a standard form.

PROXY VOTE

I, the undersigned, hereby authorize Senator _____

to vote my proxy on any issue before the Senate _____

_____ Committee

held on _____, 2007.

SB 546

SB 547

_____

SENATOR
STATE OF MONTANA

Jent

Senate Finance

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (f) , a committee member may vote by proxy using a standard form.

PROXY VOTE

I, the undersigned, hereby authorize Senator _____

to vote my proxy on any issue before the Senate _____

_____ Committee

held on _____, 2007.

SJ 24 as amended yes

~~SJ 24~~ SB 24 yes

SENATOR
STATE OF MONTANA

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (1) , a committee member may vote by proxy using a standard form.

PROXY VOTE

I, the undersigned, hereby authorize Senator Mes

to vote my proxy on any issue before the Senate _____

_____ Committee

held on _____, 2007.

SJ 24 as amended yes

SB 294 yes

Grace Gallegos

SENATOR
STATE OF MONTANA

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (f) , a committee member may vote by proxy using a standard form.

PROXY VOTE

I, the undersigned, hereby authorize Senator IVANOFF

to vote my proxy on any issue before the Senate JUDICIARY

Committee

held on 20 FEBRUARY, 2007.

SJ 24 as amended

SB 294

IVANOFF

SENATOR
STATE OF MONTANA

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (1) , a committee member may vote by proxy using a standard form.

PROXY VOTE

I, the undersigned, hereby authorize Senator _____

to vote my proxy on any issue before the Senate _____

_____ Committee

held on _____, 2007.

I'm in Finance
& Claims for a bit

Carol Juneau

SENATOR
STATE OF MONTANA

MONTANA STATE SENATE
2007 LEGISLATURE

VISITOR REGISTER

JUDICIARY

DATE 2-22-07

BILLS BEING HEARD TODAY SB 546, SB 545, SB 547, SB 523, SJ 24

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Shirley K Brown	444-5906	DPHHS-CFSD	546	X	
Dan Haugrone	920 2426	MASP	546	X	
JAMES KLESSON	962-3484	HARDIN	545	X	
Tom McKerlick	672-8402	"	545	X	
Tom Shellenberg	222-5412	LIVINGSTON	546	X	
Norma Bixby	670-1668	NO 41	545	X	
Mike Fellwriter	444-4913	Corr.	545		
Joyce Delaney	444-3969	DPHHS	546	X	
Andrea V. Olsen		MT Trial Lawyers	523	X	
Anne W Sorrell		Gov Office	546	X	
J.C. WEINGARTNER	442-4350	MEA-MFT	545		X
Barbara Bell	442-4350	Florence Crittenton	546	X	X
Scott Crichton	443 8590	ACLU	546/545		X/X
Jani McCall	670-3084	MCI	546	X	
PAM BURKE	444-9610	DOC	547	X	
Rep Dave Smith		Gov	544	X	
Ali Brandon	444-2026	AG's Office/DOJ	SB 547	X	
Linda Gryczan	431-3635	MT Ct St Lobby	SB 547	✓	
Scott Crichton		ACLU	SJ 24	X	
Beth Brenneman	449-2344	MT Advocacy Program	SB 546		✓

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
60th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JESSE LASLOVICH**, on February 23, 2007 at 7:30 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Jesse Laslovich, Chairman (D)
Sen. Aubyn Curtiss (R)
Sen. Carol C. Juneau (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)
Sen. David E. Wanzenried (D)
Sen. Carol Williams (D)

Members Excused:
Sen. Larry Jent (D)

Members Absent: None.

Staff Present: Carol Andersen, Committee Secretary
Valencia Lane, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: SB 548, 2/21/2007;
Executive Action: SB 481, SB 480, SB 404, SB 198, SB 28, SB 171, SB 183, SB 393, SB 477, SB 476, SB 486, SB 346, SB 309, SB 512, SB 454, SB 389, SB 547, SB 18, SB 482, SB 277, SB 545, SB 546, SB 548.

EXECUTIVE ACTION ON SB 481

00:00:08 **Motion: SEN. WANZENRIED moved that SB 481 DO PASS.**

Discussion:

EXHIBIT(jus41a01)

00:00:52 **Motion: SEN. WANZENRIED moved that SB0481.AVL BE ADOPTED.**

Discussion:

00:01:16 **Motion/Vote: Motion carried unanimously by voice vote. SEN. PERRY, SEN. WILLIAMS and SEN. JENT voted aye by proxy.**

Discussion:

00:02:32 **Motion: SEN. WANZENRIED moved that SB 481 DO PASS AS AMENDED.**

Discussion:

00:03:00 Sen. McGee to Sen. Wanzenried

00:03:35 Sen. O'Neil to Sen. Wanzenried

00:03:57 **Motion/Vote: Motion carried 10-2 by voice vote with SEN. MCGEE voting no and SEN. PERRY voting no by Proxy. SEN. JENT voted aye by proxy.**

EXECUTIVE ACTION ON SB 480

00:06:27 **Motion: SEN. WILLIAMS moved that SB 480 DO PASS.**

Discussion:

EXHIBIT(jus41a02)

00:08:19 **Motion/Vote: SEN. WILLIAMS moved that SB048001.APM BE ADOPTED. Motion carried unanimously by voice vote. SEN. PERRY and SEN. JENT voted aye by proxy.**

00:08:56 Sen. O'Neil

00:08:54 **Motion: SEN. WILLIAMS moved that SB 480 DO PASS AS AMENDED.**

00:08:58 **Motion/Vote: SEN. WANZENRIED CALLED THE QUESTION ON SB 480. Motion carried unanimously by voice vote. SEN. JENT and SEN. PERRY voted aye by proxy.**

EXECUTIVE ACTION ON SB 404

00:12:07 **Motion: SEN. WANZENRIED moved that SB 404 DO PASS.**

EXHIBIT(jus41a03)

00:12:09 **Motion: SEN. WANZENRIED moved that SB040402.ALH BE ADOPTED.**

Discussion:

00:12:36 Tim Hall, Chief, Legal Counsel, Montana Department of Natural

00:18:22 Sen. Laslovich to Tim Hall

00:19:55 Sen. Juneau to Tim Hall

00:21:59 Sen. Juneau to John Connor, Department of Justice

00:24:22 Sen. McGee to John Connor

00:27:21 Valencia Lane, LSD

00:29:43 Sen. Juneau

00:30:47 Valencia Lane

00:31:20 John Connor

00:32:46 Valencia Lane

00:33:36 Sen. O'Neil to John Connor

00:34:55 **Motion: SEN. LASLOVICH moved to segregate amendment.**

00:35:49 Sen. Laslovich

00:37:59 **Motion/Vote: SEN. WANZENRIED CALLED THE QUESTION ON AMENDMENTS 1 & 2. Motion carried unanimously. SEN. JENT and SEN. PERRY voted aye by proxy.**

00:38:00 Sen. Laslovich

00:41:34 Sen. O'Neil

00:42:12 **Motion/Vote: SEN. SHOCKLEY moved that INDIVIDUAL CRIMES AMENDMENT BE ADOPTED. Motion failed unanimously by voice vote. SEN. JENT and SEN. PERRY voted no by proxy.**

00:42:15 **Motion: SEN. SHOCKLEY moved that SB 404 DO PASS AS AMENDED.**

00:42:48 **Motion/Vote: SEN. SHOCKLEY CALLED THE QUESTION ON SB 404. Motion carried unanimously by voice vote. SEN. JENT and SEN. PERRY voted aye by proxy.**

00:43:58 Break

00:53:19 Resume

EXECUTIVE ACTION ON SB 198

00:54:03 **Motion/Vote: SEN. MCGEE moved that SB 198 BE TABLED. Motion carried unanimously by voice vote. SEN. JENT, SEN. WANZENRIED and SEN. PERRY voted aye by proxy.**

EXECUTIVE ACTION ON SB 28

00:55:57 **Motion/Vote: SEN. SHOCKLEY moved that SB 28 BE TABLED. Motion carried unanimously by voice vote. SEN. WANZENRIED, SEN. JENT and SEN. PERRY voted aye by proxy.**

EXECUTIVE ACTION ON SB 171

00:56:42 **Motion/Vote: SEN. SHOCKLEY moved that SB 171 BE TABLED. Motion carried unanimously by voice vote. SEN. WANZENRIED, SEN. JENT and SEN. PERRY voted aye by proxy.**

EXECUTIVE ACTION ON SB 183

00:56:09 **Motion/Vote: SEN. SHOCKLEY moved that SB 183 BE TABLED. Motion carried unanimously by voice vote. SEN. WANZENRIED, SEN. JENT and SEN. PERRY voted aye by proxy.**

HEARING ON SB 548

Opening Statement by Sponsor:

00:58:13 SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 548,** Report of canvass is election record for certified rosters of legislators.

EXHIBIT(jus41a04)
EXHIBIT(jus41a05)
EXHIBIT(jus41a06)

Proponents:

01:36:00 Janice Doggett, Chief Counsel for Secretary of State

Opponents: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

01:37:42 **Sen. Perry**

EXECUTIVE ACTION ON SB 393

01:38:31 **Motion: SEN. LASLOVICH moved that SB 393 DO PASS.**

Discussion:

EXHIBIT(jus41a07)

01:39:41 **Motion: SEN. LASLOVICH moved that SB039302.AVL BE ADOPTED.**

Discussion:

01:40:08 Valencia Lane, LSD

01:42:33 **Motion/Vote: SEN. MOSS CALLED THE QUESTION ON SB039302.AVL. Motion carried unanimously by voice vote. SEN. WANZENRIED and SEN. JENT voted aye by proxy.**

01:43:03 **Motion: SEN. LASLOVICH moved that SB 393 DO PASS AS AMENDED.**

Discussion:

01:43:59 Sen. McGee

01:45:07 Sen. O'Neil

01:45:39 **Motion/Vote: Motion carried 8-4 by voice vote with SEN. SHOCKLEY, SEN. MCGEE, and SEN. CURTIS voting no. SEN. PERRY voted no by proxy. SEN. JENT and SEN. WILLIAMS voted aye by proxy.**

EXECUTIVE ACTION ON SB 477

01:46:45 **Motion: SEN. O'NEIL moved that SB 477 DO PASS.**

Discussion:

01:46:58 Sen. O'Neil

01:48:15 Sen. McGee

01:50:32 **Motion: SEN. MOSS CALLED THE QUESTION ON SB 477.**

01:50:45 Sen. Curtiss

01:51:17 Sen. O'Neil

01:53:25 **Motion/Vote: Motion failed 2-10 by voice vote with SEN. CURTISS and SEN. O'NEIL voting aye. SEN. WILLIAMS and SEN. JENT voted no by proxy.**

01:53:45 **Motion/Vote: SEN. LASLOVICH moved that SB 477 BE TABLED AND THE VOTE REVERSED. Motion carried.**

EXECUTIVE ACTION ON SB 476

01:54:02 **Motion: SEN. O'NEIL moved that SB 476 DO PASS.**

Discussion:

01:54:55 Sen. O'Neil

01:56:15 Sen. Laslovich

01:56:21 Sen. Shockley

01:56:39 Sen. McGee

01:56:47 Sen. Laslovich

01:57:45 **Motion/Vote: SEN. WANZENRIED CALLED THE QUESTION ON SB 476. Motion failed 5-7 by roll call vote with SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, SEN. SHOCKLEY, and SEN. WANZENRIED voting aye.**

01:58:07 **Motion/Vote: SEN. LASLOVICH moved that SB 476 BE TABLED AND THE VOTE REVERSED. Motion carried.**

EXECUTIVE ACTION ON SB 486

01:59:26 **Motion: SEN. SHOCKLEY moved that SB 486 DO PASS.**

Discussion:

EXHIBIT(jus41a08)

02:00:25 **Motion: SEN. SHOCKLEY moved that SB048601.AVL BE ADOPTED.**

Discussion:

02:01:07 **Motion/Vote: SEN. WANZENRIED CALLED THE QUESTION. Motion carried unanimously by voice vote. SEN. WILLIAMS and SEN. JENT voted aye by proxy.**

02:01:35 **Motion: SEN. SHOCKLEY moved that SB 486 DO PASS AS AMENDED.**

02:01:43 **Motion: SEN. O'NEIL moved that CONCEPTUAL AMENDMENT BE ADOPTED.**

Discussion:

02:03:53 **Motion/Vote: SEN. SHOCKLEY CALLED THE QUESTION ON CONCEPTUAL AMENDMENT. Motion carried unanimously by voice vote. SEN. WILLIAMS and SEN. JENT voted aye by proxy.**

02:04:14 Sen. McGee

02:04:50 **Motion: SEN. SHOCKLEY moved that CONCEPTUAL AMENDMENT BE ADOPTED.**

Discussion:

02:05:43 Valencia Lane, LSD

02:06:35 **Motion/Vote: Motion to adopt CONCEPTUAL AMENDMENT carried unanimously by voice vote.**

02:06:53 **Motion: SEN. SHOCKLEY moved that SB 486 DO PASS AS AMENDED.**

Discussion:

02:07:43 Sen. Perry to Sen. Shockley

02:09:47 Sen. Perry

02:09:55 **Motion: SEN. WANZENRIED CALLED THE QUESTION ON SB 486.**

02:09:56 **Motion/Vote: Motion carried unanimously by voice vote. SEN. WILLIAMS and SEN. JENT voted aye by proxy.**

EXECUTIVE ACTION ON SB 346

02:10:52 **Motion: SEN. SHOCKLEY moved that SB 346 DO PASS.**

Discussion:

EXHIBIT(jus41a09)
EXHIBIT(jus41a10)

02:12:49 Sen. Shockley

02:18:50 Sen. Wanzenried

02:19:02 Ann Brodsky, Legal Counsel for Governor

02:25:14 Sen. Wanzenried

02:25:54 Sen. Laslovich

02:25:57 **Motion: SEN. SHOCKLEY moved that SB034605.ADN BE ADOPTED.**

Discussion:

02:26:13 Sen. Curtiss

02:26:37 Sen. Shockley

02:27:38 **Vote: SEN. MCGEE CALLED THE QUESTION ON SB034605.ADN. Motion failed 6-6 by roll call vote with SEN. JENT, SEN. JUNEAU, SEN. LASLOVICH, SEN. MOSS, SEN. PEASE, and SEN. WANZENRIED voting aye.**

02:28:24 **Motion/Vote: SEN. WANZENRIED moved that SB034601.ASB BE ADOPTED. Motion carried by roll call vote 10-2.**

02:29:17 **Motion: SEN. SHOCKLEY moved that SB 346 DO PASS AS AMENDED.**

Discussion:

02:30:20 **Motion: SEN. SHOCKLEY moved that his AMENDMENT BE ADOPTED.**

02:30:45 **Motion/Vote: SEN. LASLOVICH CALLED THE QUESTION ON Sen. Shockley's Amendment. Motion carried unanimously by voice vote. SEN. JENT voted aye by proxy.**

02:31:13 **Motion/Vote: SEN. SHOCKLEY moved that SB 346 DO PASS AS AMENDED. Motion carried 11-1 by voice vote with SEN. JUNEAU voting no. SEN. JENT voted aye by proxy.**

02:32:17 Break

02:42:10 Resume

EXECUTIVE ACTION ON SB 309

02:44:10 **Motion: SEN. MCGEE moved that SB 309 DO PASS.**

Discussion:

EXHIBIT(jus41a11)

EXHIBIT(jus41a12)

02:44:32 **Motion: SEN. MCGEE moved that SB030903.AVL BE ADOPTED.**

Discussion:

02:45:01 Sen. Balyeat

02:47:08 **Motion/Vote: Motion carried unanimously by voice vote. SEN. JENT, SEN. WILLIAMS and SEN. WANZENRIED voted aye by proxy.**

02:47:39 **Motion: SEN. MCGEE moved that SB 309 DO PASS AS AMENDED.**

Discussion:

02:47:51 **Motion: SEN. LASLOVICH moved that SB30901.AGP BE ADOPTED.**

Discussion:

02:51:20 Sen. McGee

02:53:36 Sen. Shockley

02:53:47 Sen. Laslovich

02:54:18 Sen. O'Neil

02:54:35 Sen. Balyeat

02:57:25 Sen. Laslovich

02:58:25 Sen. Shockley

02:58:39 Sen. O'Neil

03:00:08 Sen. Wanzenried

03:00:14 Sen. Laslovich

03:01:22 Valencia Lane, LSD

03:01:34 Sen. McGee

03:02:48 Valencia Lane

03:03:15 **Substitute Motion: SEN. LASLOVICH made a substitute motion to change his amendment.**

Discussion:

03:03:40 Sen. Balyeat

03:03:55 Sen. McGee

03:05:07 **Motion/Vote: Motion carried 7-5 by roll call vote.**

03:06:09 **Motion: SEN. SHOCKLEY moved that SB 309 BE ADOPTED AS AMENDED.**

Discussion:

03:06:25 Sen. Perry

03:06:47 **Motion/Vote: Motion that SB 309 DO PASS AS AMENDED carried unanimously by voice vote. SEN. JENT voted aye by proxy.**

EXECUTIVE ACTION ON SB 512

03:07:49 **Motion: SEN. SHOCKLEY moved that SB 512 DO PASS.**

Discussion:

03:08:01 **Motion: SEN. SHOCKLEY moved that AMENDMENT BE ADOPTED.**

03:08:19 **Motion/Vote: SEN. WANZENRIED CALLED THE QUESTION ON AMENDMENT. Motion carried unanimously by voice vote. SEN. JENT voted aye by proxy.**

03:08:36 **Motion: SEN. SHOCKLEY moved that SB 512 DO PASS AS AMENDED.**

Discussion:

03:10:21 Sen. Shockley

03:13:50 Sen. Wanzenried

03:14:37 Sen. Shockley

03:17:29 **Motion/Vote: SEN. MOSS CALLED THE QUESTION ON SB 512. Motion failed 5-7 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, and SEN. SHOCKLEY voting aye.**

03:17:41 **Motion/Vote: SEN. LASLOVICH moved that SB 512 BE TABLED AND THE VOTE REVERSED. Motion carried.**

EXECUTIVE ACTION ON SB 454

03:18:19 **Motion: SEN. JUNEAU moved that SB 454 DO PASS.**

Discussion:

EXHIBIT(jus41a13)
EXHIBIT(jus41a14)
EXHIBIT(jus41a15)
EXHIBIT(jus41a16)

03:19:51 **Motion: SEN. JUNEAU moved that SB045402.APM BE ADOPTED.**

Discussion:

03:23:47 **Motion/Vote: SEN. WANZENRIED CALLED THE QUESTION ON AMENDMENT. Motion carried 9-3 by voice vote with SEN. CURTISS, SEN. MCGEE, and SEN. PERRY voting no. SEN. JENT voted aye by proxy.**

03:24:49 **Motion: SEN. JUNEAU moved that SB 454 DO PASS AS AMENDED.**

Discussion:

03:24:53 Sen. O'Neil

03:27:25 Sen. Juneau

03:27:41 Sen. McGee

03:34:50 Sen. Wanzenried

03:37:48 Sen. Williams

03:39:54 Sen. O'Neil

03:41:40 Valencia Lane, LSD

03:41:46 Sen. Pease

03:45:03 Sen. Moss

03:46:24 Sen. Laslovich

03:50:10 Sen. Shockley

03:50:35 Sen. Juneau

03:53:44 **Motion/Vote: Motion failed 5*-6 by voice vote with SEN. JUNEAU, SEN. LASLOVICH, SEN. MOSS, SEN. WANZENRIED, and SEN. WILLIAMS voting aye. *Sen. Jent submitted a proxy after the Executive Action. His intention was to vote aye on SB 454.**

03:55:57 **Motion/Vote: SEN. LASLOVICH moved that SB 454 BE TABLED AND THE VOTE REVERSED. Motion carried.**

EXECUTIVE ACTION ON SB 389

03:57:26 **Motion: SEN. SHOCKLEY moved that SB 389 DO PASS.**

Discussion:

03:57:41 Sen. Shockley

03:58:57 Sen. Wanzenried

03:59:10 Sen. Shockley

04:01:27 Sen. Wanzenried

04:02:11 Sen. O'Neil

04:02:56 Valencia Lane LSD

04:03:09 Sen. Laslovich

04:03:13 Sen. Juneau

04:03:21 Sen. Shockley

04:03:25 **Motion/Vote: Motion failed 4-8 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, and SEN. SHOCKLEY voting aye.**

04:04:11 **Motion/Vote: SEN. LASLOVICH moved that SB 389 BE TABLED AND THE VOTE REVERSED. Motion carried.**

EXECUTIVE ACTION ON SB 547

04:06:21 **Motion: SEN. PERRY moved that SB 547 DO PASS.**

Discussion:

04:06:43 Sen. Laslovich

04:06:49 Sen. O'Neil

04:06:50 **Motion/Vote: Motion carried unanimously by voice vote. SEN. JENT, SEN. WILLIAMS and SEN. CURTISS voted aye by proxy.**

EXECUTIVE ACTION ON SB 18

04:07:48 Sen. Laslovich

04:07:55 **Motion/Vote: SEN. MCGEE moved that SB 18 BE TABLED. Motion carried unanimously by voice vote. SEN. WILLIAMS and SEN. JENT voted aye by proxy.**

EXECUTIVE ACTION ON SB 482

04:08:46 Sen. Shockley

04:08:51 **Motion/Vote: SEN. O'NEIL moved that SB 482 BE TABLED. Motion carried 9-3 by voice vote with SEN. CURTISS, SEN. MCGEE, and SEN. WANZENRIED voting no. SEN. JENT and SEN. WILLIAMS voted aye by proxy.**

EXECUTIVE ACTION ON SB 277

04:10:27 Sen. Laslovich

04:10:46 **Motion/Vote: SEN. MCGEE moved that SB 277 BE TABLED. Motion carried 10-2 by voice vote with SEN. LASLOVICH and SEN. WANZENRIED voting no. SEN. WILLIAMS, SEN. JENT and SEN. CURTISS vote aye by proxy.**

EXECUTIVE ACTION ON SB 545

04:11:49 **Motion: SEN. MCGEE moved that SB 545 DO PASS.**

Discussion:

04:12:00 Sen. McGee

04:12:26 Sen. Shockley

04:13:31 Sen. O'Neil

04:14:24 Sen. Pease

04:16:08 Sen. Laslovich

04:17:30 **Motion/Vote: SEN. WANZENRIED CALLED THE QUESTION ON SB 545. Motion carried 7-5 by roll call vote with SEN. JENT, SEN. O'NEIL, SEN. PERRY, SEN. SHOCKLEY, and SEN. WANZENRIED voting no.**

EXECUTIVE ACTION ON SB 546

04:22:13 **Motion: SEN. MCGEE moved that SB 546 DO PASS.**

Discussion:

04:22:36 **Motion: SEN. MCGEE moved that SB054601.AGP BE ADOPTED.**

Discussion:

04:22:52 Sen. John Esp

04:23:46 Sen. O'Neil

04:24:32 Valencia Lane, LSD

04:24:40 Sen. Williams

04:24:44 **Motion/Vote: SEN. MCGEE moved that SUBSTITUTE AMENDMENT BE ADOPTED. Motion carried unanimously by voice vote. SEN. JENT and SEN. CURTISS voted aye by proxy.**

04:25:00 **Motion: SEN. MCGEE moved that SB 546 DO PASS AS AMENDED.**

EXHIBIT(jus41a17)

Discussion:

04:25:37 Sen. Williams

04:27:39 Sen. Perry

04:28:40 Sen. McGee

04:31:45 Sen. Wanzenried

04:32:31 Sen. O'Neil

04:32:52 **Motion/Vote: Motion failed 5-7 by roll call vote with SEN. CURTISS, SEN. JENT, SEN. MCGEE, SEN. O'NEIL, and SEN. PERRY voting aye.**

Motion/Vote: SEN. LASLOVICH moved that SB 546 BE TABLED AND THE VOTE REVERSED. Motion carried.

EXECUTIVE ACTION ON SB 548

04:34:36 **Motion: SEN. PERRY moved that SB 548 DO PASS.**

Discussion:

EXHIBIT(jus41a18)

04:35:12 **Motion: SEN. PERRY moved that SB054801.AGP BE ADOPTED.**

Discussion:

04:36:53 Sen. Laslovich

04:36:57 **Motion/Vote: SEN. SHOCKLEY CALLED THE QUESTION ON SB054801.AGP. Motion carried unanimously by voice vote. SEN. JENT, SEN. WILLIAMS and SEN. CURTISS voted aye by proxy.**

04:37:28 **Motion: SEN. PERRY moved that SB 548 DO PASS AS AMENDED.**

Discussion:

04:39:05 Sen. O'Neil

04:38:10 Sen. Wanzenried

04:39:49 **<u>Motion/Vote</u>: Motion failed 5-7 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, and SEN. SHOCKLEY voting aye.**

<u>Motion/Vote</u>: SEN. LASLOVICH moved that SB 548 BE TABLED AND THE VOTE REVERSED. Motion carried.

04:41:15 Sen. McGee

04:41:52 Sen. Moss

04:42:07 Sen. Laslovich

04:42:33 Sen. O'Neil

ADJOURNMENT

Adjournment: 12:15 P.M.

_____
SEN. JESSE LASLOVICH, Chairman

_____
CAROL ANDERSEN, Secretary

JL/ca

Additional Exhibits:

EXHIBIT(jus41aad.pdf)

MONTANA SENATE
2007 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 2-23-07

NAMES	PRESENT	ABSENT	EXCUSED
SEN. LYNDA MOSS (D)	✓		
SEN. DAN McGEE (R)	✓		
SEN. CAROL WILLIAMS (D)	✓		
SEN. CAROL JUNEAU (D)	✓		
SEN. GERALD PEASE (D)	✓		
SEN. JIM SHOCKLEY (R)	✓		
SEN. AUBYN CURTISS (R)	✓		
SEN. JERRY O'NEIL (R)	✓		
SEN. LARRY JENT (D)			✓
SEN. GARY PERRY (R)	✓		
SEN. DAVID WANZENRIED (D)	✓		
SEN. JESSE LASLOVICH (D) CHAIRMAN	✓		
VALENCIA LANE, LSD	✓		
CAROL ANDERSEN, COMMITTEE SECRETARY	✓		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 309** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Jesse Laslovich, Chair

And, that such amendments read:

1. Title, lines 5 through 10.
Following: "DISASTER" on line 5
Strike: remainder of line 5 through "INCIDENT" on line 6
Following: "INCIDENT;" on line 6
Strike: remainder of line 6 through "INCIDENT;" on line 8
Insert: "AND"
Following: "ENFORCEMENT" on line 8
Strike: remainder of line 8 through "DATE" on line 10

2. Page 1, line 14 through page 2, line 2.
Strike: section 1 in its entirety
Renumber: subsequent sections

3. Page 2, line 5.
Strike: "or the occurrence of an incident"

4. Page 2, line 6.
Following: "person"
Insert: "acting or"

5. Page 2, line 8 through line 9.
Strike: subsection (2) in its entirety
Insert: "(2) After a violation of subsection (1) has occurred, the party injured by a confiscation action may bring an action for damages in a court having jurisdiction.
(3) (a) As used in this section, "confiscation action" means the intentional deprivation by a person in Montana of a privately owned firearm.

Committee Vote:
Yes 12, No 0
Fiscal Note Required ___ KF

(b) The term does not include the taking of a firearm from a person:

(i) in self-defense;

(ii) possessing a firearm while the person is committing a felony or misdemeanor; or

(iii) who may not lawfully possess the firearm because of a prior criminal conviction."

6. Page 2, line 11 through page 15, line 12.
Strike: sections 3 through 18 in their entirety
Insert: "NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [section 1]."

- END -

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 346** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Jesse Laslovich, Chair

And, that such amendments read:

1. Title, line 4 through line 5.
Strike: "A PERSON WHO"
Insert: "PUBLIC"
Following: "CONTRACTS"
Strike: remainder of line 4 through "ILLEGAL" on line 5
Insert: "AND SUBCONTRACTS WITH A PERSON WHO KNOWINGLY EMPLOYS OR CONTRACTS WITH AN UNAUTHORIZED"

2. Title, line 6.
Strike: "ILLEGAL"
Insert: "UNAUTHORIZED"

3. Page 1, line 9 through line 10.
Following: "that"
Strike: remainder of line 9 through "illegal" on line 10
Insert: "an employer is prohibited from employing an unauthorized"

4. Page 1, line 11 through line 21.
Strike: line 11 through line 21 in their entirety
Insert: "WHEREAS, public agencies should take reasonable means to require those with whom they contract and subcontract to comply with federal law."

5. Page 1, line 25.
Strike: "illegal"
Insert: "unauthorized"

Committee Vote:
Yes 11, No 1
Fiscal Note Required __ KH

6. Page 1, line 26.
Following: "not"
Strike: "employ or contract with"

7. Page 1, line 27 through page 2, line 2.
Following: "agency," on line 27
Strike: remainder of line 27 through page 2, line 2
Insert: "knowingly employ or contract with:

(a) an unauthorized alien, as defined in 8 U.S.C. 1324a(h)(3), or with a person whom the contractor or subcontractor should have known was an unauthorized alien; or

(b) another person who knowingly employs an unauthorized alien or a person whom the employer or contractor should have known was an unauthorized alien.

(2) A person who contracts with a public agency or the subcontractor of a person who contracts with a public agency who violated subsection (1) is in material breach of the contract. In the event of a breach, the public agency may pursue all legal contract remedies, including but not limited to terminating the contract or subcontract. In addition, the public agency may prohibit the contractor or subcontractor from bidding on a contract or contracting with the public agency for a period not to exceed 3 years.

(3) A contract of a public agency must expressly state the requirements of this section.

(4) A public agency terminating a contract pursuant to subsection (2) shall report the termination to the legislative audit division, provided for in 5-13-301, at the end of the calendar year in which the contract was terminated. The report must state the number and type of contracts terminated and the number of unauthorized aliens employed by the person contracting with the public agency or another person contracting with that person."

8. Page 2, line 4.
Strike: "illegal"
Insert: "unauthorized"
Strike: "-- void contract"

9. Page 2, line 5.
Following: "An"
Insert: "unauthorized"
Following: "alien"
Strike: remainder of line 5 through "deportable"
Insert: ", as defined in 8 U.S.C. 1324 a(h)(3),"

10. Page 2, line 9.
Strike: subsection (2) in its entirety
Renumber: subsequent subsection

- END -

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 393** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Jesse Laslovich, Chair

And, that such amendments read:

1. Title, line 5.
Following: "WHICH"
Strike: "CUSTODY"
Insert: "PARENTING"

2. Title, line 6.
Following: "OF"
Strike: "CUSTODY"
Insert: "PARENTING"

3. Page 1, line 17.
Following: line 16
Strike: "dissolution of their marriage regarding custody of minor children"
Insert: "parenting of a minor child"
Following: "mediation"
Insert: "of the parenting dispute"

4. Page 1, line 18.
Following: "finds"
Strike: "that the case is not appropriate for mediation."
Insert: ":
(a) that participation in parenting mediation would result in the imposition of a cost to a party whose filing or appearance fees have been waived pursuant to 25-10-404;
(b) that requiring parenting mediation would constitute a financial hardship to either party;
(c) that there is no facilitative mediator with the

Committee Vote:
Yes 8, No 4
Fiscal Note Required ___ KH

qualifications stated in 40-4-307 in the county in which either party resides;

(d) that the parties have previously participated in mediation of the parenting dispute; or

(e) that the required parenting mediation is prohibited by subsection (5).

(3)"

5. Page 1, line 18.
Following: "purposes of"
Insert: "mandatory parenting"

6. Page 1, line 19.
Following: "over the"
Strike: "custody of or visitation with"
Insert: "parenting of"

7. Page 1, line 20.
Following: "of a"
Strike: "visitation agreement"
Insert: "parenting plan"

8. Page 1, line 22.
Following: "making"
Insert: "parenting"
Following: "decisions"
Strike: "about child custody and visitation"

9. Page 1, line 24.
Following: "of"
Strike: "custody and visitation"
Insert: "parenting"

10. Page 1, line 26.
Following: "of"
Strike: "custody and visitation"
Insert: "parenting"

11. Page 1, line 27.
Following: line 26
Insert: "(4) A letter from the mediator addressed to the parties is sufficient proof of participation in a mediation under this part."
Renumber: subsequent subsections

- END -

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 404** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Jesse Laslovich, Chair

And, that such amendments read:

1. Title, lines 4 and 5.
Strike: "EMERGENCY" on line 4 through "MCA" on line 5
Insert: "FIREFIGHTERS"

2. Page 1, line 9 through page 2, line 3.
Strike: section 1 through section 3 in their entirety
Insert: "NEW SECTION. **Section 1. Liability of firefighters.** (1) A firewarden, firefighter, or officer or employee of a state or governmental fire agency is not liable for any civil damages for acts or omissions while fighting fires other than damages occasioned by gross negligence or by willful or wanton acts or omissions.

(2) For the purposes of this section, "governmental fire agency" means a fire protection entity organized under Title 7, chapter 33."

Insert: "NEW SECTION. **Section 2. Legal representation for firefighters.** The department shall provide legal representation to its employees who fight fires for any criminal prosecution arising from an act or omission on a fire."

Insert: "NEW SECTION. **Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [section 2]."

- END -

Committee Vote:
Yes 12, No 0
Fiscal Note Required ___ NF

SENATE STANDING COMMITTEE REPORT

February 23, 2007

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 480** (first reading copy -- white) **do pass as amended.**

Signed: ~~_____~~
Senator Jesse Laslovich, Chair

And, that such amendments read:

1. Page 1, line 11.
Following: "agreement"
Insert: "or a written addendum to the rental agreement"

- END -

Committee Vote:
Yes 12, No 0
Fiscal Note Required ___ K7

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SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 481** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Jesse Laslovich, Chair

And, that such amendments read:

1. Title, line 8.
Following: "40-1-202"
Insert: ","
Strike: "AND"
Following: "40-1-203,"
Insert: "AND 40-1-208,"

2. Page 3, line 6.
Following: line 5
Insert: "Section 4. Section 40-1-208, MCA, is amended to read:

"40-1-208. Penalties. (1) An applicant for a marriage license, a physician or other person authorized by rule of the department of public health and human services to issue a medical certificate, or a person in charge of or authorized to make reports or statements for a laboratory who misrepresents the person's identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205, a licensing officer who issues a marriage license without having received the certificate form, if required, or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license, or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, <u>certificates acknowledging the rights and obligations of marriage,</u> and applications referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health

Committee Vote:
Yes 10, No 2
Fiscal Note Required ___ KJ

officers or their representatives. A person who divulges the information or opens to inspection the certificates, statements, reports, or applications, without authority, to any person not entitled to the material by law is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.""

Renumber: subsequent section

- END -

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 486** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Jesse Laslovich, Chair

And, that such amendments read:

1. Page 1, line 3.
Following: line 2
Insert: "BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE"

2. Title, line 6.
Following: ";"
Insert: "REVISING THE PENALTY;"

3. Page 1, line 12.
Following: "knowingly"
Insert: ", with the use of physical force or contact,"

4. Page 1, line 14 through line 15.
Following: "term" on line 14
Strike: remainder of line 14 through "or more than" on line 15
Insert: "not to exceed"

- END -

Committee Vote:
Yes 12, No 0
Fiscal Note Required ___ KF

411355SC.ssc

SENATE STANDING COMMITTEE REPORT

February 23, 2007

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 545** (first reading copy -- white) **do pass.**

Signed: _____
Senator Jesse Laslovich, Chair

- END -

Committee Vote:
Yes 7, No 5
Fiscal Note Required ___

411236SC.ssc

SENATE STANDING COMMITTEE REPORT

February 23, 2007

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 547** (first reading copy -- white) **do pass.**

Signed: _____
Senator Jesse Laslovich, Chair

- END -

Committee Vote:
Yes 12, No 0
Fiscal Note Required ___

COMMITTEE FILE COPY

TABLED BILL

The **SENATE JUDICIARY COMMITTEE** TABLED **SB 18, SB 28, SB 171, SB 183, SB 198, SB 277, SB 389, SB 454, SB 476, SB 477, SB 482, SB 512, SB 546, SB 548**, by motion, on **Friday, February 23, 2007**.

Carol Andersen
(For the Committee)

KJ
(Secretary of the Senate)

2-23
(Time) (Date)

February 23, 2007 Carol R. Andersen, Secretary Phone: 444-4697

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-23-07 BILL NO. SB 481 NUMBER _____

MOTION: Do Pass as Amended

NAME	AYE	NO
SEN. LYNDA MOSS (D)	✓	
SEN. DAN McGEE (R)		✓
SEN. CAROL WILLIAMS (D)	✓	
SEN. CAROL JUNEAU (D)	✓	
SEN. GERALD PEASE (D)	✓	
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R)	✓	
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D) P	✓	
SEN. GARY PERRY (R) P		✓
SEN. DAVID WANZENRIED (D)	✓	
SEN. JESSE LASLOVICH (D) CHAIRMAN	✓	
	10	2
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-13-07 BILL NO. 476 NUMBER _____

MOTION: Do Pass

NAME	AYE	NO
SEN. LYNDA MOSS (D)		✓
SEN. DAN McGEE (R)	✓	
SEN. CAROL WILLIAMS (D)		✓
SEN. CAROL JUNEAU (D)		✓
SEN. GERALD PEASE (D)		✓
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R)		✓
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D)		✓
SEN. GARY PERRY (R)	✓	
SEN. DAVID WANZENRIED (D)	✓	
SEN. JESSE LASLOVICH (D) CHAIRMAN		✓
	5	7
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

D

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-23-07 BILL NO. 346 NUMBER _____

MOTION: Shockley amend

NAME	AYE	NO
SEN. LYNDA MOSS (D)		✓
SEN. DAN McGEE (R)	✓	
SEN. CAROL WILLIAMS (D)	✓	
SEN. CAROL JUNEAU (D)		✓
SEN. GERALD PEASE (D)		✓
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R)	✓	
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D)		✓
SEN. GARY PERRY (R)	✓	
SEN. DAVID WANZENRIED (D)		✓
SEN. JESSE LASLOVICH (D) CHAIRMAN		✓
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-23-07 BILL NO. 346 NUMBER _____

MOTION: Bill as amended Do Pass

NAME	AYE	NO
SEN. LYNDA MOSS (D)		
SEN. DAN McGEE (R)		
SEN. CAROL WILLIAMS (D)		
SEN. CAROL JUNEAU (D)		
SEN. GERALD PEASE (D)		
SEN. JIM SHOCKLEY (R)		
SEN. AUBYN CURTISS (R)		
SEN. JERRY O'NEIL (R)		
SEN. LARRY JENT (D)		
SEN. GARY PERRY (R)		
SEN. DAVID WANZENRIED (D)		
SEN. JESSE LASLOVICH (D) CHAIRMAN		
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-23-07 BILL NO. 346 NUMBER _____

MOTION: VZ Amend

NAME	AYE	NO
SEN. LYNDA MOSS (D)	✓	
SEN. DAN McGEE (R)		✓
SEN. CAROL WILLIAMS (D)	✓	
SEN. CAROL JUNEAU (D)	✓	
SEN. GERALD PEASE (D)	✓	
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R)		✓
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D)	✓	
SEN. GARY PERRY (R)	✓	
SEN. DAVID WANZENRIED (D)	✓	
SEN. JESSE LASLOVICH (D) CHAIRMAN	✓	
		2
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-23-07 BILL NO. 309 NUMBER _____

MOTION: Do not concur SB 8

NAME	AYE	NO
SEN. LYNDA MOSS (D)	✓	
SEN. DAN McGEE (R)		✓
SEN. CAROL WILLIAMS (D)	✓	
SEN. CAROL JUNEAU (D)	✓	
SEN. GERALD PEASE (D)	✓	
SEN. JIM SHOCKLEY (R)		✓
SEN. AUBYN CURTISS (R)		✓
SEN. JERRY O'NEIL (R)		✓
SEN. LARRY JENT (D)	✓	
SEN. GARY PERRY (R)		✓
SEN. DAVID WANZENRIED (D)	✓	
SEN. JESSE LASLOVICH (D) CHAIRMAN	✓	
	7	4
VALENCIA LANE, LSD		5
CAROL ANDERSEN, COMMITTEE SECRETARY		

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-23-07 BILL NO. 309 NUMBER _____

MOTION: Do Pass as Amended

NAME	AYE	NO
SEN. LYNDA MOSS (D)	✓	
SEN. DAN McGEE (R) changed vote	X	✓
SEN. CAROL WILLIAMS (D)	✓	
SEN. CAROL JUNEAU (D)	✓	
SEN. GERALD PEASE (D)	✓	
SEN. JIM SHOCKLEY (R)		✓
SEN. AUBYN CURTISS (R)		✓
SEN. JERRY O'NEIL (R)		✓
SEN. LARRY JENT (D)	✓	
SEN. GARY PERRY (R)		✓
SEN. DAVID WANZENRIED (D)	✓	
SEN. JESSE LASLOVICH (D) CHAIRMAN	✓	
	7	5
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-23 BILL NO. SJ2 NUMBER

MOTION: Bill (as amended)?

NAME	AYE	NO
SEN. LYNDA MOSS (D)	~~✓~~	✓
SEN. DAN McGEE (R)	✓	
SEN. CAROL WILLIAMS (D)		✓
SEN. CAROL JUNEAU (D)		✓
SEN. GERALD PEASE (D)		✓
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R)	✓	
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D)		✓
SEN. GARY PERRY (R)	✓	
SEN. DAVID WANZENRIED (D)		✓
SEN. JESSE LASLOVICH (D) CHAIRMAN		✓
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-23 BILL NO. 459 NUMBER

MOTION: Do Pass as amended

NAME	AYE	NO
SEN. LYNDA MOSS (D)	✓	
SEN. DAN McGEE (R)		✓
SEN. CAROL WILLIAMS (D)	✓	
SEN. CAROL JUNEAU (D)	✓	
SEN. GERALD PEASE (D)		✓
SEN. JIM SHOCKLEY (R)		✓
SEN. AUBYN CURTISS (R)		✓
SEN. JERRY O'NEIL (R)		✓
SEN. LARRY JENT (D)		
SEN. GARY PERRY (R)		✓
SEN. DAVID WANZENRIED (D)	✓	
SEN. JESSE LASLOVICH (D) CHAIRMAN	✓	
	3	6
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-23 BILL NO. 387 NUMBER _____

MOTION: _____

NAME	AYE	NO
SEN. LYNDA MOSS (D)		✓
SEN. DAN McGEE (R)	✓	
SEN. CAROL WILLIAMS (D)		✓
SEN. CAROL JUNEAU (D)		✓
SEN. GERALD PEASE (D)		✓
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R)	✓	
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D)		✓
SEN. GARY PERRY (R)		✓
SEN. DAVID WANZENRIED (D)		✓
SEN. JESSE LASLOVICH (D) CHAIRMAN		✓
	4	8
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

F - R - T

K

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-23-07 BILL NO. SB 545 NUMBER _____

MOTION: _____

NAME	AYE	NO
SEN. LYNDA MOSS (D)	✓	
SEN. DAN McGEE (R)	✓	
SEN. CAROL WILLIAMS (D)	✓	
SEN. CAROL JUNEAU (D)	✓	
SEN. GERALD PEASE (D)	✓	
SEN. JIM SHOCKLEY (R)		✓
SEN. AUBYN CURTISS (R)	✓	
SEN. JERRY O'NEIL (R)		✓
SEN. LARRY JENT (D)		✓
SEN. GARY PERRY (R)		✓
SEN. DAVID WANZENRIED (D)		✓
SEN. JESSE LASLOVICH (D) CHAIRMAN	✓	
	7	5
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-23-07 BILL NO. 546 NUMBER _____

MOTION: amendment

NAME	AYE	NO
SEN. LYNDA MOSS (D)		✓
SEN. DAN McGEE (R)	✓	
SEN. CAROL WILLIAMS (D)		✓
SEN. CAROL JUNEAU (D)		✓
SEN. GERALD PEASE (D)		✓
SEN. JIM SHOCKLEY (R)		✓
SEN. AUBYN CURTISS (R)	✓	
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D)	✓	
SEN. GARY PERRY (R) P	✓	
SEN. DAVID WANZENRIED (D)		✓
SEN. JESSE LASLOVICH (D) CHAIRMAN		✓
	5	7
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-23-07 BILL NO. SB 48 NUMBER _____

MOTION: Do Pass as am.

NAME	AYE	NO
SEN. LYNDA MOSS (D)		✓
SEN. DAN McGEE (R)	✓	
SEN. CAROL WILLIAMS (D)		✓
SEN. CAROL JUNEAU (D)		✓
SEN. GERALD PEASE (D)		✓
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R)	✓	
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D)		✓
SEN. GARY PERRY (R)	✓	
SEN. DAVID WANZENRIED (D)		✓
SEN. JESSE LASLOVICH (D) CHAIRMAN		✓
	5	
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

F R-T

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

Voice ~~ROLL CALL~~ VOTE

DATE 2-23-07 BILL NO. SB 393 NUMBER _____

MOTION: _____

NAME	AYE	NO
SEN. LYNDA MOSS (D)	✓	
SEN. DAN McGEE (R)	✓	
SEN. CAROL WILLIAMS (D)		✓
SEN. CAROL JUNEAU (D)	✓	
SEN. GERALD PEASE (D)	✓	
SEN. JIM SHOCKLEY (R)	✓	✓
SEN. AUBYN CURTISS (R)	✓	✓
SEN. JERRY O'NEIL (R) P	✓	
SEN. LARRY JENT (D)		✓
SEN. GARY PERRY (R)		✓
SEN. DAVID WANZENRIED (D) P	✓	
SEN. JESSE LASLOVICH (D) CHAIRMAN	✓	
	8	4
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

K

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

Voice ~~ROLL CALL~~ VOTE

DATE 2-23-07 BILL NO. 427 NUMBER _____

MOTION: Do Pass

NAME		AYE	NO
SEN. LYNDA MOSS (D)			✓
SEN. DAN McGEE (R)			✓
SEN. CAROL WILLIAMS (D)	P		✓
SEN. CAROL JUNEAU (D)			✓
SEN. GERALD PEASE (D)			✓
SEN. JIM SHOCKLEY (R)			✓
SEN. AUBYN CURTISS (R)		✓	
SEN. JERRY O'NEIL (R)		✓	
SEN. LARRY JENT (D)	P		✓
SEN. GARY PERRY (R)			✓
SEN. DAVID WANZENRIED (D)			✓
SEN. JESSE LASLOVICH (D) CHAIRMAN			✓
		2	10
VALENCIA LANE, LSD			
CAROL ANDERSEN, COMMITTEE SECRETARY			

F - R - T: 10-2

K

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

Voice ~~ROLL CALL~~ VOTE

DATE 2-23-07 BILL NO. SB 346 NUMBER _____

MOTION: Do Pass as amended

NAME	AYE	NO
SEN. LYNDA MOSS (D)	✓	
SEN. DAN McGEE (R)	✓	
SEN. CAROL WILLIAMS (D)	✓	
SEN. CAROL JUNEAU (D)		✓
SEN. GERALD PEASE (D)	✓	
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R)	✓	
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D)	✓	
SEN. GARY PERRY (R)	✓	
SEN. DAVID WANZENRIED (D)	✓	
SEN. JESSE LASLOVICH (D) CHAIRMAN	✓	
	11	1
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

K

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

Voice ~~ROLL CALL~~ VOTE

DATE 2-23-07 BILL NO. SB 482 NUMBER _____

MOTION: to Table

NAME	AYE	NO
SEN. LYNDA MOSS (D)	✓	
SEN. DAN McGEE (R)		✓
SEN. CAROL WILLIAMS (D)	✓	
SEN. CAROL JUNEAU (D)	✓	
SEN. GERALD PEASE (D)	✓	
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R)		✓
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D)	✓	
SEN. GARY PERRY (R)	✓	
SEN. DAVID WANZENRIED (D)		✓
SEN. JESSE LASLOVICH (D) CHAIRMAN	✓	
	9	3
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

K

MONTANA STATE SENATE
2007 LEGISLATURE

JUDICIARY

Voice ~~ROLL CALL~~ VOTE

DATE 2-23-07 BILL NO. 222 NUMBER _____

MOTION: to Table

NAME	AYE	NO
SEN. LYNDA MOSS (D)	✓	
SEN. DAN McGEE (R)	✓	
SEN. CAROL WILLIAMS (D) P	✓	
SEN. CAROL JUNEAU (D)	✓	
SEN. GERALD PEASE (D)	✓	
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R) P	✓	
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D) P	✓	
SEN. GARY PERRY (R)	✓	
SEN. DAVID WANZENRIED (D)		✓
SEN. JESSE LASLOVICH (D) CHAIRMAN		✓
	10	2
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (f) , a committee member may vote by proxy using a standard form.

PROXY VOTE

I, the undersigned, hereby authorize Senator McGee

to vote my proxy on any issue before the Senate Judiciary

Committee

held on 2/23/07, 2007.

PERRY

SENATOR
STATE OF MONTANA

See Over

SB 481 Wanzenreid
DP Amd = (Aye)
DPAmd No

SB 480 Lind
DP amd = (aye)
DP Amd Aye

SB 404 Lind
D.P. Amd (1 & 2) = Aye
DP Amd (3-9) = No
DP as Amd Aye

SB 198 - Table Aye
SB 28 - " Aye
SB 171 - " Aye
SB 183 - " Aye
SB 512 - D.P. Aye
SB 454
Amd 02.apm - No
DoPass Amd ~~No~~
SB 546 - Amd Aye

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (f) , a committee member may vote by proxy using a standard form.

SP

PROXY VOTE

I, the undersigned, hereby authorize Senator _____

to vote my proxy on any issue before the Senate _____

_____ Committee

held on _____, 2007.

SB 481 Amend Yes

SB 480 amend Yes

SB 404 amend Yes no

SB 393 amend

SB 477 no

476 no

486 amend amend amend Yes

Jent

SENATOR

STATE OF MONTANA

SB 346 5 amend no

W amend yes

5 amend yes

SB yes

SB 309 amend amend amend

Yes

SB 198 table

SB 28 table

SB 171 table

SB 183 table

SB 393 amend

SB 512 amend
NO
table

SB 454 amend yes

SB 548
amend
NO

SB 389 no

SB 547 yes

SB 18 ~~yes~~ table

SB 482 table

SB 277 table

SB 545 NO

SB 546 amend not yes
yes

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (f) , a committee member may vote by proxy using a standard form.

PROXY VOTE

I, the undersigned, hereby authorize Senator Mans

to vote my proxy on any issue before the Senate _____

_____ Committee

held on February 7, 2007, 2007.

SB 477 no
Sub tbl bill

SB 346 S omend

476 no

486 Omend
amend
amend yo

SB 389 no

Carol Mathews

SENATOR
STATE OF MONTANA

SB 547 yo

SB 369
Omend
Omend

SB 18 ~~yo~~ tbl

SB 393 amend 4
SB 405 amend yes

SB 477

SB 482 table

SB 277 table

SB 545

SB 548 amend
NO

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (f) , a committee member may vote by proxy using a standard form.

PROXY VOTE

I, the undersigned, hereby authorize Senator Dan McGee

to vote my proxy on any issue before the Senate Judiciary

_____ Committee

held on Feb 23, 2007.

Please Take
SB 309

Gaylynn Curtiss
SENATOR
STATE OF MONTANA

See Over

SB 512 - D.P. — Aye

SB 454
Amd 02, apm - No
Do Pass Amd — No

SB 389
Table — No

SB 18 - Table — Yes

SB 482 - Table — No

SB 277 - Table — Yes

SB 545 - D.P. — Yes
~~III~~ II #1

SB 546 - DP
Amd - Esp = Aye — Aye

SB 548
Amd - Perry = Aye
DP as Amd — Aye

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (f) , a committee member may vote by proxy using a standard form.

PROXY VOTE

I, the undersigned, hereby authorize Senator MOSS

to vote my proxy on any issue before the Senate JUDICIARY

Committee

held on 23 FEBRUARY, 2007.

SB 98 tabled SB477
SB 128 tabled
SB 171 tabled
SB 183 tabled
SB 393 amend

WANZENRIED.

SENATOR
STATE OF MONTANA

SENATE PROXY FORM

According to Senate Rule 30-70 (13) (1) , a committee member may vote by proxy using a standard form.

PROXY VOTE

I, the undersigned, hereby authorize Senator [redacted] Moss

to vote my proxy on any issue before the Senate Judiciary

Feb 23 Committee

held on _____, 2007.

Received after Executive action

[redacted]

SENATOR

STATE OF MONTANA

MONTANA STATE SENATE
2007 LEGISLATURE

VISITOR REGISTER

JUDICIARY

DATE 2-23-07

BILLS BEING HEARD TODAY SB 548

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Tim HALL	444-6702	DNRC	SB 404	✓	
Janice Doggett	444-5375	SOS	SB 548	✓	

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Amendments to Senate Bill No. 309
1st Reading Copy

Requested by Senator Jesse Laslovich

For the Senate Judiciary Committee

Prepared by Greg Petesch
February 23, 2007 (2:09pm)

1. Title, lines 5 through 10.
Following: "DISASTER" on line 5
Strike: remainder of line 5 through "INCIDENT" on line 6
Following: "INCIDENT;" on line 6
Strike: remainder of line 6 through "INCIDENT;" on line 8
Insert: "AND"
Following: "ENFORCEMENT" on line 8
Strike: remainder of line 8 through "DATE" on line 10

2. Page 1, line 14 through page 2, line 2.
Strike: section 1 in its entirety
Renumber: subsequent sections

3. Page 2, line 5.
Strike: "or the occurrence of an incident"

4. Page 2, line 6.
Following: "person"
Insert: "acting or"

5. Page 2, line 8 through line 9.
Strike: subsection (2) in its entirety
Insert: "(2) After a violation of subsection (1) has occurred, the party injured by a confiscation action may bring an action for damages in a court having jurisdiction.

(3) (a) As used in this section, "confiscation action" means the intentional deprivation by a person in Montana of a privately owned firearm.

(b) The term does not include the taking of a firearm from a person:

(i) in self-defense;

(ii) possessing a firearm while the person is committing a felony or misdemeanor; or

(iii) who may not lawfully possess the firearm because of a prior criminal conviction."

6. Page 2, line 11 through page 15, line 12.
Strike: sections 3 through 18 in their entirety
Insert: "NEW SECTION. **Section 2. {standard} Codification instruction.** [Section 1] is intended to be codified as an

Amendments to Senate Bill No. 346
1st Reading Copy

For the Senate Judiciary Committee

Prepared by Greg Petesch
February 23, 2007 (10:32am)

1. Title, line 4 through line 5.
Strike: "A PERSON WHO"
Insert: "PUBLIC"
Following: "CONTRACTS"
Strike: remainder of line 4 through "ILLEGAL" on line 5
Insert: "AND SUBCONTRACTS WITH A PERSON WHO KNOWINGLY EMPLOYS OR CONTRACTS WITH AN UNAUTHORIZED"

2. Title, line 6.
Strike: "ILLEGAL"
Insert: "UNAUTHORIZED"

3. Page 1, line 9 through line 10.
Following: "that"
Strike: remainder of line 9 through "illegal" on line 10
Insert: "an employer is prohibited from employing an unauthorized"

4. Page 1, line 11 through line 21.
Strike: line 11 through line 21 in their entirety
Insert: "WHEREAS, public agencies should take reasonable means to require those with whom they contract and subcontract to comply with federal law."

5. Page 1, line 25.
Strike: "illegal"
Insert: "unauthorized"

6. Page 1, line 26.
Following: "not"
Strike: "employ or contract with"

7. Page 1, line 27 through page 2, line 2.
Following: "agency," on line 27
Strike: remainder of line 27 through page 2, line 2
Insert: "knowingly employ or contract with:
(a) an unauthorized alien, as defined in 8 U.S.C. 1324a(h)(3), or with a person whom the contractor or subcontractor should have known was an unauthorized alien; or
(b) another person who knowingly employs an unauthorized

alien or a person whom the employer or contractor should have known was an unauthorized alien.

(2) A person who contracts with a public agency or the subcontractor of a person who contracts with a public agency who violated subsection (1) is in material breach of the contract. In the event of a breach, the public agency may pursue all legal contract remedies, including but not limited to terminating the contract or subcontract. In addition, the public agency may prohibit the contractor or subcontractor from bidding on a contract or contracting with the public agency for a period not to exceed 3 years.

(3) A contract of a public agency must expressly state the requirements of this section.

(4) A public agency terminating a contract pursuant to subsection (2) shall report the termination to the legislative audit division, provided for in 5-13-301, at the end of the calendar year in which the contract was terminated. The report must state the number and type of contracts terminated and the number of unauthorized aliens employed by the person contracting with the public agency or another person contracting with that person."

8. Page 2, line 4.
Strike: "illegal"
Insert: "unauthorized"
Strike: "-- void contract"

9. Page 2, line 5.
Following: "An"
Insert: "unauthorized"
Following: "alien"
Strike: remainder of line 5 through "deportable"
Insert: ", as defined in 8 U.S.C. 1324 a(h)(3),"

10. Page 2, line 9.
Strike: subsection (2) in its entirety
Renumber: subsequent subsection

- END -

Amended

Amendments to Senate Bill No. 404
1st Reading Copy

For the Senate Judiciary Committee

Prepared by Greg Petesch
February 23, 2007 (9:05am)

1. Title, lines 4 and 5.
Strike: "EMERGENCY" on line 4 through "MCA" on line 5
Insert: "FIREFIGHTERS"

2. Page 1, line 9 through page 2, line 3.
Strike: section 1 through section 3 in their entirety
Insert: "NEW SECTION. **Section 1. Liability of firefighters.** (1) A firewarden, firefighter, or officer or employee of a state or governmental fire agency is not liable for any civil damages for acts or omissions while fighting fires other than damages occasioned by gross negligence or by willful or wanton acts or omissions.

(2) For the purposes of this section, "governmental fire agency" means a fire protection entity organized under Title 7, chapter 33."
Insert: "NEW SECTION. **Section 2. Legal representation for firefighters.** The department shall provide legal representation to its employees who fight fires for any criminal prosecution arising from an act or omission on a fire."
Insert: "NEW SECTION. **Section 3. {standard} Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [section 2]."

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
60th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Diane Rice, on March 28, 2007 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Rep. Diane Rice, Chairman (R)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Dave Gallik, Vice Chairman (D)
Rep. Douglas Cordier (D)
Rep. Robyn Driscoll (D)
Rep. Bob Ebinger (D)
Rep. George Everett (R)
Rep. Julie French (D)
Rep. Rick Jore (C)
Rep. Krayton Kerns (R)
Rep. Roger Koopman (R)
Rep. Deborah Kottel (D)
Rep. Tom McGillvray (R)
Rep. Jesse O'Hara (R)
Rep. Ken Peterson (R)
Rep. Holly Raser (D)
Rep. John Ward (R)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: SB 411, SB 547, SJR 2, SJR, 6, SJR, 7, SJR 24, 3/19/2007
Executive Action: SJR 24, SJR 7, SJR 2, SJR 6, SB 294

HEARING ON SB 411

Opening Statement by Sponsor:

00:01:17 Sen. Rick Laible (R), SD 44, opened the hearing on SB 411, Expand order of protection to victims of assault.

Proponents' Testimony:

00:05:37 Jennifer Hill-Hart, Montana Coalition Against Domestic and Sexual Violence
EXHIBIT(1)
00:07:42 Ali Bovington, Assistant Attorney General, Department of Justice, State of Montana
00:09:00 Nanette Gilbertson, Montana County Attorneys Association

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

00:09:54 Rep. Everett
00:10:58 Rep. Rice
00:11:09 Ms. Bovington
00:11:36 Rep. Gallik
00:12:54 Sen. Laible
00:13:29 Rep. McGillvray
00:13:53 Ms. Bovington
00:15:45 Rep. Stoker
00:16:08 Ms. Bovington
00:17:50 Rep. Rice
00:18:02 Sen. Laible
00:19:45 Rep. Peterson
00:19:58 Sen. Laible

Closing by Sponsor:

00:20:34 Sen. Laible

00:21:50 Rep. Kottel
00:22:27 David Niss, Legislative Services

HEARING ON SJR 24

Opening Statement by Sponsor:

00:23:33 Sen. Jesse Laslovich (D), SD 43, opened the hearing on SJ 24, Study prison population growth and alternative sentencing.

Proponents' Testimony:

00:25:59 Mike Ferriter, Director, Department of Corrections, State of Montana
00:27:40 Scott Crichton, Executive Director, ACLU
EXHIBIT(2)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

00:31:02 Rep. McGillvray
00:31:31 Sen. Laslovich
00:31:50 Diana Koch, Chief Legal Counsel, Department of Corrections, State of Montana
00:33:15 Rep. Peterson
00:34:29 Ms. Koch
00:35:39 Sen. Laslovich

Closing by Sponsor:

00:37:45 Sen. Laslovich

HEARING ON SB 547

Opening Statement by Sponsor:

00:39:09 Sen. Gary Perry (R), SD 35, opened the hearing on SB 547, Revise laws on sentencing, registration, and treatment of sexual offenders.

Proponents' Testimony:

00:51:41 Sen. Linda Moss, SD 26
00:53:57 Mike Ferriter, Director, Department of Corrections, State of Montana

00:55:12 Ali Bovington, Assistant Attorney General, Department of Justice, State of Montana
EXHIBIT(3)
EXHIBIT(4)
EXHIBIT(5)
01:05:15 Jennifer Hill-Hart, Montana Coalition Against Domestic and Sexual Violence
01:06:57 Linda Gryczan, Montana Women's Lobby
01:08:21 Mike Mahoney, Warden, Montana State Prison
01:09:12 Rachel Roberts, Montana Family Foundation
01:10:00 Pam Bunke, Director, Adult Community Corrections Services, Department of Correction, State of Montana
01:14:19 Nanette Gilbertson, Montana County Attorneys Association

Opponents' Testimony:

01:15:10 J.C. Weingartner, MEA-MFT
01:25:01 Scott Crichton, Executive Director, ACLU
EXHIBIT(6)

Informational Testimony: None

Questions from Committee Members and Responses:

01:30:06 Rep. Stoker
01:30:22 Ms. Bovington
01:31:47 Dir. Ferriter
01:37:09 Rep. Kottel
01:37:38 Ms. Bovington
01:40:19 Rep. French
01:40:50 Ms. Bovington
01:43:45 Rep. Driscoll
01:44:59 Dir. Ferriter
01:48:55 Rep. O'Hara
01:49:18 Warden Mahoney
01:50:59 Rep. Jore
01:51:20 Sen. Perry
01:57:30 Ms. Bovington
01:59:40 Rep. Peterson
02:01:23 Dir. Ferriter
02:04:24 Rep. Gallik
02:06:15 Ms. Bovington
02:08:25 Rep. French
02:08:42 Ms. Bovington
02:08:58 Ms. Koch
02:09:58 Sen. Perry
02:11:45 Ms. Bovington
02:12:06 Rep. Rice

02:12:19 Ms. Bovington
02:14:39 Rep. Peterson

Closing by Sponsor:

02:15:25 Sen. Perry

02:19:28 Break
02:47:00 Reconvene

HEARING ON SJR 7

Opening Statement by Sponsor:

02:47:08 Sen. Greg Lind (D), SD 50, opened the hearing on SJR 7, Study requiring background checks for direct care workers.

Proponents' Testimony:

02:48:58 Mike Hanshew, Montana Health Solutions, Missoula, Montana, DBA-Nightingale Services
02:52:07 Robert Speirer, AARP-Montana
EXHIBIT(7)
02:55:13 Betty Beverly, Director, Montana Senior Citizens Association
02:55:56 Beth Brenneman, Montana Advocacy Program

Opponents' Testimony: None

Informational Testimony:

02:57:05 Jeff Buska, Administrator, Quality Assurance Division, Department of Public Health and Human Services, State of Montana

Questions from Committee Members and Responses:

02:57:58 Rep. O'Hara
02:58:30 Sen. Lind
02:59:15 Mr. Hanshew
03:01:15 Rep. Rice
03:01:21 Mr. Hanshew

Closing by Sponsor:

03:04:27 Sen. Lind

HEARING ON SJR 2

Opening Statement by Sponsor:

03:04:59 Sen. Frank Smith (D), SD 16, opened the hearing on SJR 2, Study DUI laws.

Proponents' Testimony:

03:06:52 Don Hargrove, Montana Addiction Services Providers
03:08:45 Nanette Gilbertson, Montana Sheriffs and Peace Officers Association, Montana County Attorneys Association
03:09:53 Keith Allen, International Brotherhood of Electrical Workers

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

03:10:44 Rep. Jore
03:11:11 Rep. Kottel
03:11:56 Rep. Raser
03:12:03 Sen. Smith

Closing by Sponsor:

03:13:09 Sen. Smith

HEARING ON SJR 6

Opening Statement by Sponsor:

03:14:37 Sen. Trudi Schmidt (D), SD 11, opened the hearing on SJR 6, Juvenile justice interim study resolution.

Proponents' Testimony:

03:16:41 Steve Gibson, Director, Youth Services, Department of Corrections, State of Montana

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

03:18:16 Sen. Schmidt

EXECUTIVE ACTION ON SJR 24

03:20:06 **Motion:** Rep. Stoker moved that **SJR 24 BE CONCURRED IN.**

Discussion:

03:21:04 Rep. Jore
03:22:15 Rep. Kottel
03:23:47 Rep. Jore
03:25:26 Rep. McGillvray
03:26:39 Rep. Peterson

03:27:55 **Vote:** Motion that **SJR 24 BE CONCURRED IN** carried 10-7 by roll call vote with Reps. Stoker, Everett, Koopman, Kerns, Peterson, Jore, and Rice voting no. Reps. Everett and Kerns voted by proxy. Rep. McGillvray to on carry on the House Floor.

EXECUTIVE ACTION ON SJR 7

03:29:38 **Motion:** Rep. McGillvray moved that **SJR 7 BE CONCURRED IN.**

Discussion:

03:29:53 Rep. Peterson
03:30:24 Rep. Raser
03:30:58 Rep. O'Hara
03:31:29 Rep. French

03:31:59 **Vote:** Motion that **SJR 7 BE CONCURRED IN** carried 9-8 by roll call vote with Reps. Stoker, Everett, Koopman, Kerns, Peterson, McGillvray, Jore, and Rice voting no. Reps. Everett and Kerns voted by proxy. Rep. Raser to carry on the House Floor.

EXECUTIVE ACTION ON SJR 2

03:33:01 **Motion:** Rep. Stoker moved that **SJR 2 BE CONCURRED IN.**

Discussion:

03:33:17 Rep. Stoker
03:33:29 Rep. Gallik
03:33:50 Rep. Peterson

03:34:53 Rep. O'Hara
03:35:26 Rep. Ebinger

03:35:48 **Vote**: Motion that **SJR 2 BE CONCURRED IN** carried 9-8 by roll call vote with Reps. Stoker, Everett, Koopman, Kerns, McGillvray, Ward, Jore, and Rice voting no. Reps. Everett and Kerns voted by proxy. Rep. Cohenour to carry on the House Floor.

EXECUTIVE ACTION ON SJR 6

03:36:58 **Motion**: Rep. Stoker moved that **SJR 6 BE CONCURRED IN.**

Discussion:

03:37:13 Rep. Ebinger
03:37:50 Rep. Raser
03:38:44 Rep. French
03:39:13 Rep. Peterson

03:39:58 **Vote**: Motion that **SJR 6 BE CONCURRED IN** carried 11-6 by voice vote with Reps. Stoker, Koopman, McGillvray, Jore, Everett, and Kerns voting no. Reps. Everett and Kerns voted by proxy. Rep. Ebinger to carry on the House Floor.

EXECUTIVE ACTION ON SB 294

03:41:20 **Motion**: Rep. Stoker moved that **SB 294 BE CONCURRED IN.**

Discussion:

03:41:51 Rep. Stoker
03:42:27 Rep. Kottel
03:43:57 Rep. Peterson
03:44:36 Rep. Kottel
03:46:07 Rep. Peterson
03:46:27 Rep. Rice

03:46:49 **Vote**: Motion that **SJR 294 BE CONCURRED IN** failed 8-9 by roll call vote with Reps. Gallik, French, Raser, Cordier, Driscoll, O'Hara, Kottel, and Ebinger voting aye. Reps. Everett and Kerns voted by proxy.

03:47:40 **Motion/Vote**: Rep. Stoker moved that **SB 294 BE TABLED AND THE VOTE REVERSED.** Motion carried unanimously by voice vote. Reps. Everett and Kerns voted by proxy.

ADDITIONAL EXHIBITS:

Exhibit Received at the Conclusion of Hearing today RE: SB 142 heard in Committee March 16, 2007:
EXHIBIT(8)

Exhibit Received at the Conclusion of Hearing today RE: SB 486 heard in Committee March 27, 2007:
EXHIBIT(9)

Exhibit Received at the Conclusion of Hearing today RE: SB 486 heard in Committee March 27, 2007:
EXHIBIT(10)

ADJOURNMENT

Adjournment: 11:48 A.M.

_____
REP. DIANE RICE, Chairman

_____
PAM SCHINDLER, Secretary

DR/ps

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
60th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Diane Rice, on April 2, 2007 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Rep. Diane Rice, Chairman (R)
Rep. Dave Gallik, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Douglas Cordier (D)
Rep. Robyn Driscoll (D)
Rep. Bob Ebinger (D)
Rep. George Everett (R)
Rep. Julie French (D)
Rep. Rick Jore (C)
Rep. Krayton Kerns (R)
Rep. Roger Koopman (R)
Rep. Deborah Kottel (D)
Rep. Tom McGillvray (R)
Rep. Jesse O'Hara (R)
Rep. Ken Peterson (R)
Rep. Holly Raser (D)
Rep. John Ward (R)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: No Bills to be heard
Executive Action: SB 48, 547, SB 130, SB 192, SB 363, SB 447, SB 486, SB 49, SB 96

EXECUTIVE ACTION ON SB 48

00:02:38 **Motion**: Rep. Stoker moved that **SB 48 BE CONCURRED IN.**

00:02:57 **Motion**: Rep. French moved that **SB 48 BE AMENDED.**
EXHIBIT(juh70a01)

Discussion:

00:03:06 Rep. French
00:03:49 Rep. Kottel
00:04:55 Rep. Stoker
00:05:11 David Niss, Legislative Services
00:05:56 Rep. Peterson
00:06:43 Rep. Raser

00:07:56 **Vote**: Motion that **SB 48 BE AMENDED** carried unanimously by voice vote. Reps. Everett and Koopman voted by proxy.

00:08:14 **Motion**: Rep. French moved that **SB 48 BE CONCURRED IN AS AMENDED.**

Discussion:

00:08:28 Rep. Rice
00:09:21 Rep. French
00:09:49 Rep. Kottel

00:10:39 **Vote**: Motion that **SB 48 BE CONCURRED IN AS AMENDED** carried unanimously by voice vote. Reps. Everett and Koopman voted by proxy. Rep. Raser to carry.

EXECUTIVE ACTION ON SB 49

00:11:19 **Motion**: Rep. Stoker moved that **SB 49 BE CONCURRED IN.**

00:12:54 **Motion**: Rep. Gallik moved that **SB 49 BE AMENDED.**
EXHIBIT(juh70a02)

Discussion:

00:14:16 Mr. Niss
00:14:19 Rep. Rice
00:14:40 Rep. Peterson
00:15:26 Rep. Raser
00:15:42 Mr. Niss
00:17:35 Rep. Kottel

00:20:26 Rep. French
00:21:36 Mr. Niss
00:23:19 Rep. Kottel
00:25:21 Rep. Gallik
00:28:01 Rep. Peterson
00:28:50 Rep. Raser
00:30:04 Rep. Rice

00:30:33 Rep. Gallik withdrew amendment for SB 49.

00:30:39 Chairman Rice postponed action on SB 49.

EXECUTIVE ACTION ON SB 547

00:31:11 **Motion**: Rep. Stoker moved that **SB 547 BE CONCURRED IN.**

Discussion:

00:31:42 Rep. French
00:31:47 Rep. Rice
00:32:28 Rep. Stoker

00:34:20 **Motion**: Rep. Stoker moved that **SB 547 BE AMENDED.**
EXHIBIT(juh70a03)

Discussion:

00:35:10 Rep. Stoker
00:36:07 Mr. Niss
00:37:18 Rep. Stoker
00:39:10 Mr. Niss

00:39:53 **Vote**: Motion that **SB 547 BE AMENDED** carried unanimously by voice vote.

00:40:03 **Motion**: Rep. French moved that **SB 547 BE CONCURRED IN AS AMENDED.**

00:40:59 **Motion**: Rep. French moved that **SB 547 BE AMENDED.**
EXHIBIT(juh70a04)

Discussion:

00:42:06 Rep. Kottel
00:43:28 Mr. Niss
00:44:07 Rep. Kottel
00:44:35 Rep. Peterson
00:45:54 Rep. French

00:47:08 **Substitute Motion**: Rep. Peterson moved that **SB 547 BE AMENDED** with a **Substitute Amendment** for Page 6, Line 26; after the word "treatment" insert a "period" striking the remainder of the sentence. Rep. French's amendment (Exhibit 4) still within this amendment.

00:48:15 **Vote**: Motion that **SB 547 BE AMENDED** carried 15-2 by voice vote with Reps. Jore and Gallik voting no.

00:48:30 **Motion**: Rep. French moved that **SB 547 BE CONCURRED IN AS AMENDED.**

00:48:42 **Motion**: Rep. Driscoll moved that **SB 547 BE AMENDED.**
EXHIBIT(juh70a05)

Discussion:

00:49:04 Rep. Driscoll
00:52:06 Rep. O'Hara
00:53:03 Rep. Stoker
00:53:41 Rep. Peterson
00:54:48 Rep. Ward
00:55:19 Mr. Niss
00:55:48 Rep. French
00:56:28 Rep. Kottel
00:57:38 Mr. Niss
00:58:23 Rep. Rice
00:58:38 Rep. Stoker
00:58:44 Brenda Elias, Department of Corrections, State of Montana
00:59:42 Rep. Peterson
01:00:06 Ms. Elias
01:01:24 Rep. French
01:01:48 Ms. Elias
01:05:39 Rep. Stoker
01:07:06 Ms. Elias
01:12:40 Rep. Rice
01:12:58 Rep. Peterson
01:14:40 Rep. Stoker
01:15:06 Rep. Driscoll
01:15:43 Rep. O'Hara

01:16:03 **Vote**: Motion that **SB 547 BE AMENDED** failed 7-10 by voice vote with Reps. French, Raser, Cordier, Driscoll, Kottel, Gallik, and Ward voting aye. Rep. Koopman voted by proxy.

01:17:31 **Motion**: Rep. Stoker moved that **SB 547 BE AMENDED.** **EXHIBIT(juh70a06)**

Discussion:

01:17:55 Rep. Stoker
01:18:13 Mr. Niss
01:21:26 Rep. Rice

01:22:02 **Substitute Motion**: Rep. Peterson made a substitute motion to **SEGREGATE PARAGRAPH 22 FROM REST of the AMENDMENT** (Exhibit 6).
01:22:49 Rep. Peterson

01:23:44 **Vote**: Motion to **SEGREGATE PARAGRAPH 22 FROM AMENDMENT** failed 3-14 by roll call vote with Reps. Koopman, Jore and Rice voting aye.

Chairman Rice ruled for a re-vote after much confusion is stated by committee members.

01:25:27 Rep. Cordier
01:25:53 Rep. Rice
01:25:59 Rep. Peterson

01:26:19 **Vote**: Motion that **SB 547 BE AMENDED** failed 3-14 by roll call vote with Reps. Koopman, Jore and Rice voting aye.

01:27:19 Rep. Raser
01:28:08 Mr. Niss
01:29:54 Rep. Stoker
01:30:15 Rep. Kottel
01:31:12 Rep. French
01:31:47 Rep. Ebinger
01:31:58 Mr. Niss
01:33:48 Rep. French
01:34:18 Rep. O'Hara

01:35:06 **Motion**: Rep. Stoker moved that **SB 547 BE CONCURRED IN AS AMENDED.**

Discussion:

01:35:16 **Motion**: Rep. Raser moved that **SB 547 BE AMENDED with a CONCEPTUAL AMENDMENT for PAGE 29, LINE 28; DELETE "SHALL" insert "MAY".**

Discussion:

01:36:06 Mr. Niss
01:36:30 Rep. Rice
01:36:37 Rep. Kottel
01:38:13 Mr. Niss
01:39:28 Rep. Ward
01:39:56 Rep. Koopman

01:40:39 **Vote**: Motion that **SB 547 BE AMENDED** failed 4-13 by voice vote with Reps. Jore, Koopman, McGillvray and Rice voting aye.

01:41:02 **Motion**: Rep. Stoker moved that **SB 547 BE CONCURRED IN AS AMENDED.**

01:41:13 Rep. Koopman
01:42:01 Rep. Rice
01:42:05 Rep. Peterson

01:42:18 **Motion**: Rep. Koopman moved that **SB 547 BE AMENDED with a CONCEPTUAL AMENDMENT for PAGE 29, LINE 28; INSERT "FOR PROFIT" BEHIND NON-PROFIT.**

Discussion:

01:42:52 Rep. Raser

01:43:29 **Vote**: Motion that **SB 547 BE AMENDED** carried 10-7 by roll call vote with Reps. Gallik, French, Raser, Cordier, Driscoll, Kottel, and Ebinger voting no. Rep. Cordier voted by proxy.

01:44:25 **Motion**: Rep. Stoker moved that **SB 547 BE CONCURRED IN AS AMENDED.**

01:44:31 Rep. Kerns
01:44:52 Rep. Koopman
01:45:35 Rep. French
01:46:07 Rep. O'Hara

01:46:50 **Vote**: Motion that **SB 547 BE CONCURRED IN AS AMENDED** carried 16-1 by roll call vote with Rep. Everett voting no. Rep. Cordier voted by proxy. Rep. O'Hara to carry on House Floor.

01:47:39 Break
02:03:01 Reconvene

02:02:30 Chairman Rice

EXECUTIVE ACTION ON SB 130

02:03:54 **Motion**: Rep. Stoker moved that **SB 130 BE CONCURRED IN.**

02:04:34 **Motion**: Rep. Stoker moved that **SB 130 BE AMENDED.** from hearing on 3/13/07.

Discussion:

02:04:54 Mr. Niss

02:06:51 **Vote**: Motion that **SB 130 BE AMENDED** carried 16-1 by voice vote with Rep. Jore voting no. Rep. Cordier and Raser voted by proxy.

02:07:08 **Motion/Vote**: Rep. Stoker moved that **SB 130 BE CONCURRED IN AS AMENDED.**

02:07:19 **Vote**: Motion that **SB 130 BE CONCURRED IN AS AMENDED** carried 12-5 by voice vote with Reps. McGillvray, Everett, Jore, Koopman, O'Hara voting no. Reps. Cordier and Raser voted by proxy. Rep. Stoker to carry on House Floor.

EXECUTIVE ACTION ON SB 192

02:08:32 **Motion**: Rep. Stoker moved that **SB 192 BE CONCURRED IN.**

02:08:37 **Motion**: Rep. Kottel moved that **SB 192 BE AMENDED.**
EXHIBIT(juh70a07)

02:09:48 **Vote**: Motion that **SB 192 BE AMENDED** carried unanimously by voice vote. Reps. Cordier, French and Raser voted by proxy.

02:09:56 **Motion**: Rep. Stoker moved that **SB 192 BE CONCURRED IN AS AMENDED.**

02:10:08 **Vote**: Motion that **SB 192 BE CONCURRED IN AS AMENDED** carried unanimously by voice vote. Reps. Cordier and Raser voted by proxy. Rep. McGillvray to carry on House Floor.

EXECUTIVE ACTION ON SB 363

02:10:47 **Motion**: Rep. Stoker moved that **SB 363 BE CONCURRED IN.**

02:12:32 **Motion**: Rep. Kottel moved that **SB 363 BE AMENDED.** **EXHIBIT(juh70a08)**

Discussion:

02:12:56 Rep. Kottel

02:13:59 **Vote**: Motion that **SB 363 BE AMENDED** carried unanimously by voice vote. Reps. Cordier and Raser voted by proxy.

02:14:17 **Motion**: Rep. Stoker moved that **SB 363 BE CONCURRED IN AS AMENDED.**

02:14:28 **Motion**: Rep. Kottel moved that **SB 363 BE AMENDED.** **EXHIBIT(juh70a09)**

Discussion:

02:16:14 Rep. Koopman
02:16:41 Rep. Kottel
02:16:56 Mr. Niss

02:17:46 **Substitute Motion**: Rep. Kottel made a substitute motion that **SB 363 BE AMENDED with AMENDMENT FROM HEARING 3/23/07 REGARDING PAGE 2, LINE 3, NARROWS DEFINITION. (Exhibit 9 from today)** Both Amendments must work in tandem.

Discussion:

02:19:12 Rep. Peterson
02:19:20 Mr. Niss
02:19:31 Rep. Gallik
02:20:55 Rep. Kottel
02:21:43 Mr. Niss
02:21:46 Rep. Gallik
02:21:56 Mr. Niss

02:23:35 **Vote**: Motion that **SB 363 BE AMENDED** carried unanimously by voice vote. Reps. Cordier and Raser voted by proxy.

02:23:55 **Motion**: Rep. Stoker moved that **SB 363 BE CONCURRED IN AS AMENDED.**

02:24:07 **Motion**: Rep. Koopman moved that **SB 363 BE AMENDED.** **EXHIBIT(juh70a10)**

Discussion:

02:24:32 Rep. Koopman
02:26:40 Rep. Peterson
02:28:15 Rep. Ebinger
02:28:40 Rep. Kottel
02:29:25 Rep. Jore
02:29:44 Rep. Koopman

02:30:20 **Vote**: Motion that **SB 363 BE AMENDED** failed 7-10 by roll call vote with Reps. Everett, Koopman, Kerns, McGillvray, Ward, Jore, and Rice voting aye. Reps. Cordier, Raser and O'Hara voted by proxy.

02:31:37 **Motion**: Rep. Stoker moved that **SB 363 BE CONCURRED IN AS AMENDED.**

Discussion:

02:31:42 Rep. McGillvray
02:32:06 Rep. Rice
02:33:03 Rep. Kottel
02:33:45 Rep. Koopman
02:34:40 Rep. Jore
02:35:20 Rep. Koopman
02:36:09 Mr. Niss
02:38:09 Rep. Kottel

02:40:13 **Motion**: Rep. McGillvray moved that **SB 363 BE AMENDED with a CONCEPTUAL AMENDMENT FOR PAGE 2, LINE 3, STRIKE "PRIMARY".**

Discussion:

02:40:58 Rep. Peterson
02:41:46 Rep. Stoker

02:42:46 **Vote**: Motion that **SB 363 BE AMENDED** carried 11-6 by voice vote with Reps. Driscoll, Peterson, Ebinger, Gallik, Cordier, and Raser voting no. Rep. Cordier and Raser voted by proxy.

02:43:10 **Motion**: Rep. Stoker moved that **SB 363 BE CONCURRED IN AS AMENDED.**

Discussion:

02:43:21 Rep. Koopman
02:44:37 Rep. Kottel
02:46:58 Mr. Niss
02:49:14 Rep. Koopman
02:49:25 Mr. Niss
02:50:31 Rep. Stoker
02:51:28 Rep. Kottel
02:52:57 Rep. Peterson

02:53:24 **Vote**: Motion that **SB 363 BE CONCURRED IN AS AMENDED** carried 16-1 by roll call vote with Rep. Koopman voting no. Reps. Raser, Koopman, Cordier, and O'Hara voting by proxy. Rep. Kottel to carry on House Floor.

EXECUTIVE ACTION ON SB 96

02:54:56 **Motion**: Rep. Stoker moved that **SB 96 BE CONCURRED IN.**

Discussion:

02:56:05 Rep. Everett
02:57:12 Mr. Niss

02:57:54 Chairman Rice postponed Executive Action on SB 96.

EXECUTIVE ACTION ON SB 447

02:58:19 **Motion**: Rep. Stoker moved **SB 447 BE CONCURRED IN.**

Discussion:

02:58:57 Rep. Koopman
03:01:32 Rep. Stoker
03:01:52 Mr. Niss
03:02:27 Rep. Peterson

03:03:39 **Vote**: Motion that **SB 447 BE CONCURRED IN** carried unanimously by voice vote. Reps. O'Hara, Cordier, Raser, French voted by proxy vote. Rep. Koopman to carry on House Floor.

EXECUTIVE ACTION ON SB 486

03:05:00 **Motion**: Rep. Stoker moved that **SB 486 BE CONCURRED IN.**

03:05:26 **Motion**: Rep. Koopman moved that **SB 486 BE AMENDED.**
EXHIBIT(juh70a11)

Discussion:

03:05:47 Rep. Koopman

03:06:30 **Vote**: Motion that **SB 486 BE AMENDED** carried unanimously by voice vote. Reps. Cordier and Raser voted by proxy.

03:06:43 **Motion**: Rep. French moved that **SB 486 BE CONCURRED IN AS AMENDED.**

03:06:51 **Motion**: Rep. French moved that **SB 486 BE AMENDED.**
EXHIBIT(juh70a12)

Discussion:

03:07:41 Rep. Kottel
03:10:07 Mr. Niss
03:11:12 Rep. Kottel
03:12:18 Rep. French
03:12:51 Rep. Peterson

03:14:12 **Vote**: Motion that **SB 486 BE AMENDED** failed 2-15 by voice vote with Reps. French and Ward voting aye. Reps. Cordier and Raser voted by proxy.

03:14:41 **Vote**: Rep. Stoker moved that **SB 486 BE CONCURRED IN AS AMENDED.** Motion carried 10-7 by roll call vote with Reps. French, Everett, Kerns, Peterson, O'Hara, Ward, and Rice voting no. Reps. Cordier, Driscoll and Raser voted by proxy. Rep. McGillvray to carry on House Floor.

ADJOURNMENT

Adjournment: 12:23 P.M.

_____
REP. DIANE RICE, Chairman

_____
PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT(juh70aad.pdf)

EXHIBIT 6
DATE 4/2/07
SB 547

Amendments to Senate Bill No. 547
3rd Reading Copy

Requested by Representative Ron Stoker

For the House Judiciary Committee

Prepared by David Niss
March 31, 2007 (3:34pm)

1. Title, lines 10 and 11.
Strike: "REQUIRING" on line 10 through "PROGRAM;" on line 11

2. Title, line 13.
Following: "46-23-509,"
Insert: "AND"
Strike: "AND 53-1-203,"

3. Page 8, line 4.
Strike: "12"
Insert: "13"

4. Page 8, lines 5 and 6.
Strike: "and" on line 5 through "children" on line 6

5. Page 8, line 10.
Strike: "."
Insert: "; and"

6. Page 8, line 11.
Strike: "; and"
Insert: "."

7. Page 8, lines 12 and 13.
Strike: subsection (iii) in its entirety

8. Page 8, lines 17 through 24.
Strike: subsection (c) in its entirety

9. Page 10, line 4.
Strike: "12"
Insert: "13"

10. Page 10, lines 5 and six.
Strike: "and" on line 5 through "children" on line 6

11. Page 10, line 10.
Strike: "."

OVER

Insert: "; and"

12. Page 10, line 11.
Strike: "; and"
Insert: "."

13. Page 10, lines 12 and 13.
Strike: subsection (iii) in its entirety

14. Page 10, lines 17 through 24.
Strike: subsection (c) in its entirety

15. Page 18, line 14.
Strike: "by a sexual predator of children" on line 14

16. Page 20, line 7.
Strike: "12"
Insert: "13"

17. Page 24, line 3.
Strike: "10"
Insert: "20"

18. Page 24, line 4.
Strike: "25"
Insert: "50"

19. Page 24, line 24.
Strike: "12"
Insert: "13"

20. Page 24, line 25.
Strike: "12"
Insert: "13"

21. Page 27, lines 10 through 17.
Following: "(4)"
Strike: remainder of line 10 through line 17
Insert: "An offender sentenced pursuant to the provisions of 45-5-503(4)(a) or 45-5-625(4)(a) for a second or subsequent time must be designated a level 3 offender."

22. Page 29, line 9 through page 32, line 29.
Strike: sections 19 through 21 in their entirety
Renumber: subsequent sections

- END -

EXHIBIT 5
DATE 4/2/09
SB 547

Amendments to Senate Bill No. 547
3rd Reading Copy

Requested by Representative Robyn Driscoll

For the House Judiciary Committee

Prepared by David Niss
March 29, 2007 (1:58pm)

1. Title, line 10.
Strike: "CONTRACT FOR"
Insert: "ESTABLISH"

2. Page 29, line 13.
Strike: "establishment and maintenance"
Insert: "operation"

3. Page 30, line 9.
Strike: "(iii) a residential sexual offender treatment program."

4. Page 30, line 26.
Following: ";"
Strike: "and"

5. Page 30, line 30.
Following: "department"
Insert: "; and
(n) establish and operate a residential sexual offender treatment program at the Montana state prison in Deer Lodge"

- END -

EXHIBIT 4
DATE 4/2/07
SB 547

Amendments to Senate Bill No. 547
3rd Reading Copy

Requested by Representative Julie French

For the House Judiciary Committee

Prepared by David Niss
March 28, 2007 (6:16pm)

1. Page 6, line 26.
Strike: "may"
Insert: "shall"

- END -

EXHIBIT 3
DATE 4/2/07
SB 547

Amendments to Senate Bill No. 547
3rd Reading Copy

Requested by Representative Ron Stoker

For the House Judiciary Committee

Prepared by David Niss
March 30, 2007 (6:18pm)

1. Title, line 11.
Following: "41-5-1513,"
Insert: "45-1-205, 45-5-502,"
Following: "45-5-503,"
Insert: "45-5-507, 45-5-512,"

2. Page 2, line 5.
Following: "(3)"
Insert: "or (4)"

3. Page 7.
Following: line 3
"Insert: "Section 4. Section 45-1-205, MCA, is amended to read:

"45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) or (5) may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(c) A prosecution under 45-5-504, 45-5-505, 45-5-507(1), (2), (3), or ~~(5)~~ (6), 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended

OVER

in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

{*Internal References to 45-1-205:*
13-35-101X *87-1-110X*}"

Insert: "Section 5. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly

subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) ~~A~~ Except as provided in subsections (3) and (4), a person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than $50,000.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall, upon a second or subsequent offense punishable pursuant to this subsection (4)(a), be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (4), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (4)(a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse without consent for which the person is being sentenced under subsection (4)(a);

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; or

(v) is known by the victim but does not fall within subsections (4)(c)(i) through (4)(c)(iv).

~~(4)~~ (5) An act "in the course of committing sexual assault"

includes an attempt to commit the offense or flight after the attempt or commission.

~~(5)~~ (6) Consent is ineffective under this section if:

(a) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search; or

(b) the victim is less than 14 years old and the offender is 3 or more years older than the victim."

{*Internal References to 45-5-502:*
27-2-216X *39-51-2111X* *40-4-219X* *40-15-102X*
40-15-116X *42-2-608X* *44-5-311X* *45-1-205X*
45-5-512X *45-5-512A* *45-5-512X* *46-16-216X*
46-18-104X *46-18-111X* *46-18-205A* *46-18-222X*
46-18-231A *46-23-502A*}"

Renumber: subsequent sections

4. Page 8, line 22.
Strike: "or"

5. Page 8, line 24.
Following: "person"
Insert: "; or"

(v) is known by the victim but does not fall within subsections (4)(c)(i) through (4)(c)(iv)"

6. Page 8.
Following: line 30
Insert: **"Section 7.** Section 45-5-507, MCA, is amended to read:

"45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) ~~A~~ Except as provided in subsections (4) and (5), a person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed $50,000.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4

years or more than 100 years and may be fined not more than $50,000.

(5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (5)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed $50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (5), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (5)(a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse without consent for which the person is being sentenced under subsection (5)(a);

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person; or

(v) is known by the victim but does not fall within subsections (5)(c)(i) through (5)(c)(iv).

~~(5)~~ (6) In addition to any sentence imposed under subsection (3), (4), or ~~(4)~~ (5), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

{*Internal References to 45-5-507:*

27-2-216X	*39-51-2111X*	*40-4-219X*	*40-15-102X*
40-15-116X	*42-2-608X*	*44-5-311X*	*45-1-205X*
45-1-205A	*45-5-512A*	*45-5-512A*	*45-5-512A*
46-16-216X	*46-18-104X*	*46-18-111X*	*46-18-205X*
46-23-502A	*46-23-506X*}		

Insert: "Section 8. Section 45-5-512, MCA, is amended to read:

"45-5-512. Chemical treatment of sex offenders. (1) A person convicted of a first offense under 45-5-502(3) or (4),

45-5-503(3), or 45-5-507(4) or (5) may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4).

(2) A person convicted of a second or subsequent offense under 45-5-502(3) or (4), 45-5-503, or 45-5-507 may, in addition to the sentence imposed under those sections, be sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, administered by the department of corrections or its agent pursuant to subsection (4).

(3) A person convicted of a first or subsequent offense under 45-5-502, 45-5-503, or 45-5-507 who is not sentenced to undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, may voluntarily undergo such treatment, which must be administered by the department of corrections or its agent and paid for by the department of corrections.

(4) Treatment under subsection (1) or (2) must begin 1 week before release from confinement and must continue until the department of corrections determines that the treatment is no longer necessary. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years.

(5) Prior to chemical treatment under this section, the person must be fully medically informed of its effects.

(6) A state employee who is a professional medical person may not be compelled against the employee's wishes to administer chemical treatment under this section."

{*Internal References to 45-5-512: 46-18-201A*}"

Renumber: subsequent sections

7. Page 10, line 22.
Strike: "or"

8. Page 10, line 24.
Following: "person"
Insert: "; or

(v) is known by the victim but does not fall within subsections (4)(c)(i) through (4)(c)(iv)"

9. Page 12, line 18.
Following: "in"
Insert: "45-5-502(4),"
Following: "45-5-503(4)"
Insert: ", 45-5-507(5),"

10. Page 15, line 9.
Following: "to"
Insert: "45-5-502(4),"
Following: "45-5-503(4)"
Insert: ", 45-5-507(5),"

11. Page 16, line 4.
Following: "to"
Insert: "45-5-502(4),"
Following: "45-5-503(4)"
Insert: ", 45-5-507(5),"

12. Page 17, line 25.
Following: "to"
Insert: "45-5-502(4),"
Following: "45-5-503(4)"
Insert: ", 45-5-507(5),"

13. Page 18, line 12.
Following: "assault"
Insert: ", and 45-5-502(4), sexual assault when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children"

14. Page 18, line 13.
Strike: ", and"
Insert: "; (ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children;
(x)"
Renumber: subsequent subsections

15. Page 19, line 26.
Following: "45-5-502(3)"
Insert: "(if the victim is less than 16 years of age and the offender is 3 or more years older than the victim) or (4)(if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children)"

16. Page 19, line 28.
Following: "victim"
Insert: "or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children"

17. Page 27, line 30.
Following: "to"
Insert: "45-5-502(4),"
Following: "45-5-503(4)"
Insert: ", 45-5-507(5),"

18. Page 28, line 19.
Following: "to"
Insert: "45-5-502(4),"

19. Page 28, line 20.
Following: "45-5-503(4)"
Insert: ", 45-5-507(5),"

20. Page 32, line 1.
Following: "to"
Insert: "45-5-502(4),"
Following: "45-5-503(4)"
Insert: ", 45-5-507(5),"

21. Page 32, line 28.
Strike: "20"
Insert: "24"

22. Page 32, line 29.
Strike: "20"
Insert: "24"

23. Page 33, line 7.
Strike: "12"
Insert: "16"
Strike: "17"
Insert: "21"

- END -